Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 31st July, 2014 (Sravana 9, 1936)

SERIES II No. 18

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

—

Order

No. 8/31/2014-15/D.Agri/99

Read: 1) Order No. 8/31/2012-13/D.Agri/249 dated 30-10-2012.

2) Order No. 4/12/85-PER Vol. I dated 30-06-2014.

Government has appointed Shri Orlando Rodrigues as Director of Agriculture on officiating basis vide order at Sr. No. 2. Hence his deputation period cited at Sr. No. 1 stands curtailed from the date of handing over charge as Managing Director, Goa State Horticulture Corporation Ltd.

By order and in the name of the Governor of Goa.

D. P. Dwivedi, Secretary (Agriculture).

Tonca-Caranzalem, 18th July, 2014.

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Department of Animal Husbandry

Office of the Returning Officer to the
Goa State Veterinary Council,
C/o Office of the Registrar of Co-op. Societies

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Notification

No. 50/3(1)/Elec./BOD/GSVC/RCS/HQ/14

In exercise of the powers conferred by Rule 10 of the Goa State Veterinary Council Rules, 1990, I, Shri J. B. Bhingui, Registrar of Co-op. Societies & Returning Officer to the Election of the Goa State Veterinary Council, hereby publish the programme of election of above said council as under:

Programme of Election

1. Date, time and place for filing of nominations	07-08-2014 from 10.00 a.m. to 3.00 p.m. in the Office of the Registrar of Co-op. Societies, Panaji-Goa.
2. Date, time and place of Scrutiny of nomination	09-08-2014 from 10.30 a.m. onwards in the office of the Registrar of Co-op. Societies, Panaji-Goa.
3. Date, time and place for withdrawal of nomination	11-08-2014 from 10.00 a.m. to 3.00 p.m. in the office of the Registrar of Co-op. Societies, Panaji-Goa.
4. Date, time and place of poll if necessary	11-09-2014 from 9.00 a.m. to 5.00 p.m. in the office of the Directorate of Animal Husbandry & Veterinary Services, Patto, Panaji-Goa.
5. Date, time and place of counting of votes and declaration of result	12-09-2014 from 11.00 a.m. onwards in the office of the Registrar of Co-op. Societies, Panaji-Goa.

The nomination papers and other relevant details shall be obtained from the office of the Registrar of Co-op. Societies, Panaji-Goa.

J. B. Bhingui, Returning Officer for the Goa State Veterinary Council.

Panaji, 31st July, 2014.

Department of Education, Art & Culture

Directorate of Technical Education

College Section

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Order

No. 16/331/PPS/PF/DTE/2014/1088

Read: Memorandum No. 16/228/Recruit-Posts/ /GEC/DTE/11/PF-I/1004 dated 11-07-2014.

On the recommendations of Goa Public Service Commission conveyed vide their letter No. COM(I)/5/18(1)/2011/395 dated 05-03-2012, Government is pleased to appoint Dr. Purnanand Pundalik Savoikar on temporary basis to the post of Professor in Civil Engineering (Group 'A', Gazetted) at Goa College of Engineering, Farmagudi in the pay scale of 37,400--67,000 + Academic Grade Pay ` 10,000/- with pay protection alongwith two increments (as recommended by Goa Public Service Commission) w.e.f. date of joining the post as per the terms & conditions contained in the Memorandum cited above.

The appointment is against the post created vide order No. PDD/EDN/TECH/257/65 dated 17-05-1965 and revived vide order No. 16/250/ /Creation & Revival of posts of GEC/DTE/10/2405 dated 12-07-2010 and subsequently revived vide order 16/250/Creation & Revival of Posts of GEC/DTE/ /10/756 dated 18-06-2013 (Non Plan Second Post at Sr. No. 1).

Dr. Purnanand Pundalik Savoikar will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim and his character and antecedents have been verified and nothing adverse is reported against him during his selection as Lecturer in Civil Engineering in Goa College of Engineering, Farmagudi, Ponda-Goa.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Addl. Secretary (Technical Education).

Porvorim, 18th July, 2014.

Department of Home

Home—General Division

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Notification

No. HD(G)45-59/575/66-Vol.III/2473

The Rajya Sainik Board, Goa is hereby re-constituted as under w.e.f. 01-08-2014.

1.	Hon'ble Chief Minister	: President/ /Chairman.
2.	GOC-in-C, Southern Command, Pune	: Vice-President.
3.	GOC-in-C, Western Naval Command, Mumbai	: Vice-President.
4.	AOC-in-C, South Western Air Command, Ahmedabad	: Vice-President.
5.	Minister for Home	: Member.
6.	Shri Pramod Sawant, MLA, Sanquelim	: Member.
7.	Chief Secretary	: Vice-President.
8.	Flag Officer Commanding, Goa Area	: Member.
9.	Station Commander, Panaji, Goa	: Member.
10.	Director Resettlement, Zone (South)	: Member.
11.	Director General of Police	: Member.
12.	Principal Secretary	: Member.
13.	Secretary (Finance)	: Member.
14.	Secretary (Education)	: Member.
15.	Secretary (Information & Publicity)	: Member.
16.	Collector, North Goa, Panaji	: Member.
17.	Collector, South Goa, Margao	: Member.
18.	Additional Secretary (Personnel)	: Member.
19.	Additional Secretary (Home)	: Member.
20.	Director of Sports & Youth Affairs	: Member.
21.	Director of Social Welfare	: Member.
22.	Brig. N. H. Braganza (Retd.):	Non-Official Member.

23. Vice Adm. Sunil K. Damle PVSM, AVSM, NM, VSM (Retd.)	:	Non-Official Member.
24. Air Cmde P. K. Pinto (Retd.)	:	Non-Official Member.
25. Ex-PO Krishna Mahadev Shetkar	:	Non-Official Member.
26. President, Indian Ex-service League Goa	:	Non-Official Member.
27. President, Air Force Association, Goa	:	Non-Official Member.
28. President, Goa Foundation	:	Non-Official Member.
29. Dir. General Resettlement Ministry of Defence, New Delhi	:	Special Invitee.
30. Secretary, Kendriya Sainik Board, New Delhi	:	Special Invitee.
31. Rep. of Department of Ex-Servicemen Welfare, Ministry of Defence, New Delhi	:	Vice-President.
32. Secretary, Rajya Sainik Board	:	Member Secretary.

The function of the Board are specified below:

(i) Co-ordinating and administering the work of Department of Sainik Welfare.

(ii) Promoting measures relating to the Welfare of Ex-Servicemen and the families of serving and deceased personnel.

(iii) Disseminating information to the General Public regarding the Arm Forces in the Country and taking measures to encourage the general public to take active interest in the Arm Forces.

The re-constituted Board shall hold office for a period of 2 years, from the date of issue of this Notification. It shall meet every year.

This supersedes this Department's earlier Notification No. HD(G)45-59/575/66-Vol III/1984 dated 30-07-2012 and Corrigendum Nos. HD(G) 45-59/575/66-Vol III/2386 dated 11-07-2013 & HD(G)45-59/575/66-Vol III/3053 dated 04-09-2013.

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Home).

Porvorim, 18th July, 2014.

Department of Labour

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Notification

No. 28/1/2014-Lab/226

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 10-02-2014 in reference No. IT/18/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 08th April, 2014.

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IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/18/2000

Workmen rep. by
The President
Marmagoa Steel Employees Union,
C/o House No. 447,
Macazana,
Curtorim. P. O.
Salcete, Goa ... Workmen/Party I

V/s

M/s. Marmagoa Steel
280, Eclate,
Curtorim, Salcete, Goa ... Employer/Party II

Party I/Workman Mr. Mestrilal R. Sajiwan, represented by Adv. Shri M. P. Almeida.

Employer/Party II represented by Adv. Shri G. K. Sardessai.

AWARD

(Passed on this 10th day of February, 2014)

In exercise of powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act), the Government of Goa vide order dated 20-01-2000 bearing No.CL/3-11/10(2)/(44)/99/356 has referred the following dispute for adjudication by this Tribunal.

"(1) Whether the action of the management of M/s. Marmagoa Steel Limited, Curtorim (Employer), in dismissing from the services

the following 3 workmen on the dates shown against their names who are the Office Bearers of the recognized Trade Union and protected workmen, is legal and justified?

(1) Mr. Agnelo Estibeiro with effect from 02-08-99.

(2) Mr. Mestrilal R. Sajiwan, with effect from 02-08-99.

(3) Mr. Indal Prasad Gupta, with effect from 02-08-99.

(2) If not, to what relief the workmen are entitled?"

2. Upon receipt of the dispute, reference IT/18/ /00 came to be registered and notices were issued to both the parties under registered A.D. post. Upon appearance, Party I filed the claim statement at Exb.5, Party II filed the written statement at Exb.6 and Party I then filed the rejoinder at Exb. 7.

3. It is in short the case of Party I that on 22-6-94 the workers of the Party II unionized under Gomantak Mazdoor Sangh and a settlement under Sec. 12 (3) r/w Sec.18 (3) of the Act was signed between the said union and Party II. That thereafter on 19-11-96, the workers formed an union i.e. Party I union and the said union through various letters and personal meetings brought to the notice of the management that the working conditions within the premises were not adequate but the management did not implement safety measures. That Party II terminated the services of workmen namely, Shri Agnelo Esteibero, Mestrilal Sajiwan and Indal Gupta and other two workmen namely, Shri Umashankar Yadav and Shri Jayaprakash Yadev vide letters dated 6-3-99 and 16-3-99. That the union approached the labour commissioner and during the discussions held, a settlement was arrived at. That the terms of the settlement included that the management shall revoke the dismissal order in respect of the above five workers which included the workmen in the present reference and it was agreed that the said workers shall be kept under suspension pending inquiry and the management shall expeditiously conduct and complete the enquiry proceedings and pass the final order within 60 days from the date of signing of the settlement. That thereafter the enquiry with respect to the workmen in the present reference and the workers Mestrilal Sejwan and Indal Gupta was clubbed together and Shri K.V. Nadkarni was appointed as the enquiry officer. That during the enquiry, the management by letters dated 2-8-99, discharged the services of the workmen and the above other two workers. That the dispute was raised before the Labour Commissioner and on submitting of the failure report by the Labour Commissioner, the present dispute has been referred to this tribunal for adjudication. It is the case of the workmen that the charges alleged against them were not proved; that their discharge from service is illegal, null and void and is against the certified standing orders and the principles of natural justice. It is their case that they are unemployed and they have prayed to hold the action of the management in discharging their services w.e.f. 2-8-99 as illegal and bad in law and to reinstate them back in services with continuity in service and full back wages with effect from 2-8-99.

4. In the written statement it is in short the case of Party II that the reference deserves to be rejected as the workmen did not have the authority to sign the statement of claim. It is stated that the workman Shri Indal Prasad Gupta has signed the settlement u/s. 2(p) of the Act with the employer according to which his entire dispute has been settled conclusively. It is stated that the company had severe set back from the inception but inspite it the company retained harmonious industrial relation signing long term settlement up to 31-3-97, with the union. That in December 1996 the workers formed separate union under the name of Marmagoa Steel Employees Union and then submitted a charter of demand by letter dated 14-4-1997. After negotiations, a settlement was signed between the parties for the period of three years u/s 12(3) r/w Sec. 18(3) of the Act. It is stated that the settlement was to be effective from 1-4-97 but the wage revision was to be effective from 1-1-98 and it was further agreed that for the period from 1-4-97 to 31-12-97 a lump sum amount was to be paid as per full and final settlement of the said period and accordingly arrears were to be paid as per said terms of settlement. It is stated that during the month of November 98 union placed fresh demand to pay difference of overtime for the period from 1-4-97 to 31-12-97. That during the discussion on these demands, the company with the sole intention of maintaining peace, agreed to pay the said non-existing payment by 24-2-98. It is stated that due to financial difficulty, company could not raise the fund and thus a notice was displayed on 23-2-99 deferring the payment. It is stated that on account of above, the workers started non-co-operative attitude and as such the company had to suspend the work followed by lockout and accordingly a notice to that effect was given to the workmen. It is stated

that during suspension of operation, the office bearers of the union and the dismissed employees started threatening the executives of the company of dire consequences and finally at the instance of Dy. Labour Commissioner, a settlement was arrived at on 17-3-99. It is stated that in terms of this settlement the lock out was to be lifted and the workmen were required to report for duty on 18-3-99. That the dismissal order issued to five workmen was revoked and they were kept under suspension pending enquiry as per the allegations made against them in the earlier charge sheet and the enquiry was to be completed and final order in the same was to be passed within 60 days from the date of signing of the settlement. It is stated that accordingly the enquiry continued but it was noticed that the charge sheeted workmen and the union were not co-operating and wanted to delay the enquiry. It is stated that the witnesses of the company were threatened of dire consequences and that the concerned workmen in the reference who were entering the company's main gate and threatening the other workers and officials of the company of dire consequences. It is stated that these workers were asking the willing workmen not to co-operate with the management in production and pressurizing the management. It is stated that regards to entire circumstances the company decided not to retain the concerned workmen in its services and accordingly they were dismissed w. e. f. 2-8-2000. It is stated that the dismissal of the workmen is fully legal and justified. The company has also reserved its right to prove the allegations made in charge sheet dated 18-3-99 and other allegations before the appropriate authority under the Act, in justification of its action of dismissal of the workers including the past records.

5. In the rejoinder Party I has denied the contentions raised by Party II in the written statement.

6. On the basis of above averments of the respective parties, issues dated 15-1-01 at Exb.8 were framed as under:

1. Whether the Workmen/Party I proves that they are the office bearers of Marmugao Steel Employees Union and are also the protected workmen?
2. Whether the Workmen/Party I proves that action of the Employer/Party II in dismissing them from service w. e. f. 2-8-99 is illegal and unjustified?
3. Whether the Employer/Party II proves that the statement of claim filed by the Workmen/Party I is not maintainable?
4. Whether the Employer/Party II proves that the workman Shri Indal Prasad Gupta has resigned from service and his dispute is settled?
5. Whether the Employer/Party II proves that the Workmen/Party I are guilty of the charges of misconduct levelled against them in the charge sheet?
6. Whether the Workmen/Party I are entitled to any relief?
7. What Award?

7. In terms of order dated 16-10-08 (Exb. 38), it was held by this court that Party II has dismissed this workmen without holding the enquiry and therefore the onus of proving the charges levelled against the workmen justifying the action of dismissal is on Party II and therefore the Party II is required to begin first and adduce evidence on issue No.5 and only then the burden would shift on Party I to prove that the action of the dismissal is illegal or unjustified. It is therefore clear from the above observations made in Exb.38 that in case Party II fails to prove issue No. 5, Party I is not required to prove issue No. 2. Thus, in terms of above order the evidence was first led by Party II.

8. In its evidence Party II examined Shri K. Raghvendran as witness No.1, Shri Y. K. Govil as witness No. 2, Shri T. K. Tickoo as witness No. 3 and Shri Alexander A.C. Rodrigues as witness No.4. Party I did not adduce any evidence.

9. Heard ld. Adv. Shri G. K. Sardessai for Party II and learned advocate Shri M. P. Almeida for Party I.

10. In his arguments ld. Advocate for Party II stated that since the assault was on the superior officers of Party II, the court should not interfere in the punishment imposed. In support of his submissions, he relied on the judgments such as **Kolhapur Zilla Sahakari Dudha Utpadak Sangh, Kolhapur v/s Shivaji Shankar Pharakate & Anr. 2009 I CLR 286**, **Hombe Gawda Educational Trust and another v/s State of Karnataka and others (2006) I SCC 430, Madhya Pradesh Electricity Board v/s Jagdish Chandra Sharma 2005 I CLR 1074, Orissa Cement Ltd., and Adikanda Sahu 1960 SC 518, Mahindra and Mahindra Ltd., v/s N.B. Narawade 2005 I CLR 803, New Shorrock Mills v/s Maheshbhai T. Rao (1996) 6 SCC 590, and U.P. State Road Transport Corporation v/s Subhash Chandra Sharma and others AIR 2000 SC 1163.** He stated that in domestic enquiry the strict and sophisticated rules of evidence may not apply and all materials which are logically probative for a prudent mind are permissible. In support of

his above statement, Ld. advocate for Party II relied on the judgment in the case of **State of Haryana and another v/s Rattan Singh 1977 Lab 845.**

11. On the other hand ld. Advocate for Party I stated that there is no iota of evidence before this court to say that the charges of misconduct levelled against Party I workmen are established. He further stated that once Party II fails to prove issue No. 5 relating to misconduct by Party I/Workmen, the question of proving issue No. 2 which is on the subject of justification and legality of dismissal from service w. e. f. 2-8-99, does not arise. By referring to the judgments relied upon the ld. advocate for Party II, he stated that facts in the above cases are totally different from the facts in the instant case and therefore the observations made in those judgments though are correctly made in those peculiar set of facts, cannot be applied to the instant case. Thus, according to him, the ratios in the above judgments cannot be made applicable to the case in hand.

12. I have gone through the records of the case and have duly considered the submissions made by both the learned advocates.

13. I now proceed to answer the issues with my findings on the same and the reasons thereof:

Issue No. 1	...	Partly in the positive.
Issue No. 2	...	Does not arise.
Issue No. 3	...	In the negative.
Issue No. 4	...	In the positive.
Issue No. 5	...	In the negative.
Issue No. 6	...	Workman Mr. Mestrilal R. Sajiwan is entitled to total compensation of Rs.1,60,000/-
Issue No. 7	...	As per order below.

REASONS

14. *Issue No. 1:* In para 5 of the claim statement, it is pleaded that Party I Union has its managing committee comprising of Shri Vincent Dias as President, Shri Agnelo Esteibero as General Secretary, Shri Indal Prasad Gupta as Treasurer, Shri Umashankar Yadav and Shri Jayaprakash Yadav both as the members of the Executive Committee. In reply to the above para, vide para 1 in the written statement, the contents of this para are said to be substantially correct by further stating that the said office bearers did not remain to be the office bearers as on 1-3-00 because the said union has held a fresh election and new office bearers were elected and therefore the said so called office bearers had no authority of representative character or otherwise to represent the workers. It is therefore clear that it is for Party II to establish that the above office bearers did not remain to be the same as on 1-3-2000 because the union held a fresh election and elected new office bearers. It is apparent that Party II has not proved their above plea through their witnesses or otherwise and thus in my view, Party I has succeeded in proving that Party I Workmen are the office bearers of the Party I union.

15. As regards the above office bearers also being the protected workmen, it is the case of Party II that the workmen in this reference are not the protected workmen. In their rejoinder Party I has denied the above plea of Party II. No evidence is adduced by Party I to indicate that they have complied with the requirements of section 61 of the Industrial Disputes (Central) Rules, 1957 to get Party I Workmen recognized as "protected workmen". Even otherwise, no arguments are advanced by the ld. advocate for Party I on the above subject as regards proof of Party I workmen being the protected workmen. Thus, though Party I has proved that they are the office bearers of Party I union, they have failed to prove that these office bearers are the protected workmen.

Hence my findings.

16. *Issues No. 4 and 5:* Undoubtedly, the workmen in this reference were dismissed from the services by Party II vide orders dated 2-8-99. There is otherwise no dispute that the workman Mr. Indal Prasad Gupta has resigned from the services of the company and has signed settlement u/s 2(p) of the Act and in terms of this settlement his entire dispute with Party II has been conclusively settled and he has given up the claim of reinstatement or re-employment and therefore nothing survives in the present reference as regard the Indal Prasad Gupta. Even otherwise, in the course of the proceedings Party II filed an application dated 7-8-3 (Exb. 19) stating that out of the three workmen in the present dispute, two have settled the matter with management i.e. Mr. Indal Prasad Gupta signed the settlement with management on 23-2-2000 and Shri Agnelo Estebeiro has signed the settlement with management on 10-6-2003. Party II has also produced on record both the above settlements and has stated that as both these workmen have given up their claim in the reference, no dispute award be passed as they have already settled the matter. Ld. Advocate for Party II did not dispute the above position. This being the case, the present reference needs to be decided

only as regards the workman Shri Mestrilal R. Sajiwan. It therefore follows from above discussion that the dispute as regards the workman Indal Prasad Gupta and also the workman Agnelo Estebeiro, has been settled.

17. The order dated 2-8-1999 vide which the workman in this reference was dismissed is produced by Shri K. Raghavendran at Exb. 110. Reading of order at Exb.110 makes it clear that enquiry on the charge sheet dated 18-3-99 issued to Mestrilal Sajiwan, was being conducted and one of the dates of the enquiry was fixed on 1-8-99. That on 31-7-99 an affidavit was received from the witness Shri P. Suresh Rao mentioning amongst other things that he was unable to attend the enquiry as he cannot stay in Goa to give further evidence in the enquiry due to threats of dire consequences given to him. It is also stated in the affidavit that apart from Shri P. Suresh Rao other witnesses were also threatened of dire consequences. Exb.110 further reveals that the witnesses of the management are being threatened so that they cannot give evidence in the enquiry. It is further stated in Exb.110 that in such circumstances management finds that it is not practically possible to continue with domestic enquiry and has therefore decided in the interest of the organization not to retain this workman in services and therefore he is dismissed from the company's services with immediate effect.

18. It is therefore clear from above contents of Exb.110 that Party II did not complete the enquiry initiated against the workman vide charge sheet dated 18-3-99. It however cannot be dispute that in terms of the observations in the judgment in the case of **M/s. Firestone Tyre & Rubber Co. India (Pvt.) Ltd., v/s The Management and others 1972 I LLJ 278,** even if no domestic enquiry is held or in a case where the domestic enquiry is held but is found to be defective, the employer can lead evidence before the Tribunal in justification of the dismissal or discharge of the workmen, which in other words means that the employer can lead evidence before the Tribunal to prove misconducts against the workmen. In the instant case, the domestic enquiry did not reach its logical conclusion and therefore it is as good as not holding of the enquiry by the management. In such situation, the employer gets an opportunity of leading evidence before the court to prove the misconduct enlisted in the charge sheet. It is therefore required to see if Party II has by leading sufficient and convincing evidence before this court, has proved the misconducts as envisaged in the charge sheet dated 18-3-99. Apparently, charge sheet dated 18-3-99 is at Exb.M2(colly) in the enquiry file. The charges levelled against the Shri Mestrilal Sejwan are as under:

> " It is reported that on 24-02-99, when you were in general shift at about 12.45 p.m., you along with Mr. Agenelo Estebeiro C.No. 5082, Mr. Anthony F. Dias C. No. 5249, Mr. Florence Pereira C. No.3075 and Mr. Indal Prasad Gupta, C.No. 5017 went to the SMS Control Room and instructed that Mr. Manu Singh, First Hand, to slow down the operation and further pressurized him not to change the taps and increase the speed and to continue the slow down. Subsequently, you along with the above persons went round the other sections of SMS and CCM and instructed the employees to resort to slow down. This resulted in total disruption of the entire activities of SMS.
>
> It is further reported that at about 2.30 p.m. you along with a group of workmen instructed the employees in the LRF to completely stop when the liquid metal in LRF was ready for casting. Inspite of the shift incharge advise to you that the liquid metal in the LRF can result in serious danger to the safety of employees on the shop floor, can result in huge loss to the company and damage to the machinery and equipments, you continued to be adamant and did not allow any employees to perform their normal duties. As the situation was very grave with the liquid metal in the LRF, the shift incharge at about 4:00 p.m. decided to operate the LRF to ensure that the liquid metal is removed from the LRF. When the LRF was in the process of being switched on in the control room, you along with Mr. Indal Prasad Gupta, Mr. Jayaprakash Yadav, Mr.Umashankar Yadav and along with a group of workmen entered the LRF control room and physically assaulted to Mr. Suresh Rao, Dy. Manager (SMS), causing grievous injuries and threatened him with dire consequences if he attempted to operate the LRF. You further switched off the LRF and left the control room.
>
> It is further reported that at about 5.30 p.m., you went to Admn. Block along with Mr. Agnelo Estebeiro, Mr. Indal Prasad Gupta and threatened Mr. Suresh Rao, Dy. Manager (SMS) that he will be killed if the furnace operation is not started immediately.

The above act if proved will amount to following misconducts under the certified standing orders of the company, which is applicable to you.

28.1 Will full insubordination or disobedience (whether or not in combination with another) of any lawful and reasonable orders of superior.

28.2 Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof or resorting to obstruction aimed at or resulting in paralyzing the normal conduct or work of the company.

28.11 Riotous, disorderly, indecent or improper behaviour on the premises of the establishment if it adversely affects the working or discipline of the establishment.

28.12 Commission of any act subversive of discipline or good behaviour on the precincts of the establishment.

28.17 Damage or loss whether willful or due to irresponsible action or damage due to negligence or carelessness to or/of any property of the establishment.

28.28 Willful interference with the work of other workmen.

28.37 Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the company premises against any employees of the company.

28.41 Pursuance of conduct against the interest of the company.

28.44 Instigating or demonstration on company's property.

19. Shri K. Raghvendran has in his evidence not deposed on the subject of the contents of charge sheet dated 18-3-99 and what he has stated is that during the conduct of the enquiry the charge sheeted workman and the union were not co-operating with the enquiry and wanted to delay the same. He has stated that company observed that these workmen were entering the company's main gate and were threatening the other workers and officials of the company of dire consequences and were asking the willing workmen not to co-operate with the management in production. He has stated that the workmen did not want to adhere to the settlement dated 17-3-99 and wanted to delay the enquiry. He has stated that the workers threatened one Mr. Suresh Rao of dire consequences making impossible for the company to bring the witnesses in the enquiry and that company observed that a deliberate and systematic attempt was followed by the workers so that the enquiry is not completed at all. He has stated that the company therefore in the interest of the organization decided not to retain the concerned workmen in the services and accordingly dismissed them w. e. f. 2-8-99 which dismissal according to him is fully legal and justified.

20. In his cross-examination, he has stated that he has not seen the incident where in Shri Suresh Rao was allegedly assaulted by the workmen. He has also made it clear that he was not an eye witness to any of the incidents.

21. From the nature of above evidence of Shri K. Raghvendran, it becomes clear that his testimony is of no assistance to Party II to prove the misconduct levelled against the workman herein in the charge sheet dated 18-3-99 as also in the letter dated 2-8-99, as this witness does not have any personal knowledge of the incidents mentioned therein.

22. The other witnesses namely, Y. K. Govil, Shri T. K. Tickoo and Shri Alexander Rodrigues have not at all deposed about the incident mentioned in the charge sheet dated 18-3-99 and also about the other contents of the letter dated 2-8-99. It may be mentioned here that, Party II examined Shri Y. K. Govil and Shri T. K. Tickoo only to bring on record the facts relating to an incident dated 30-8-99 to show the involvement of Party I workman and others in an incident of assault on the officers of Party II, post termination of their services and therefore their testimonies are of no help to Party II to prove misconducts mentioned in the charge sheet dated 18-3-99 and in the letter dated 2-8-99. Shri Alex Rodrigues has been examined to establish that the financial condition of Party II is not sound and hence the testimony of this witness too is of no help to Party II to prove the charges of misconduct levelled against Party I workman.

23. I have gone through the judgments relied upon by the ld. advocate for Party II. In the judgment in the case of **Kolhapur Zilla (supra),** the workman was a temporary workman and he was dismissed from service, for misconduct duly proved in disciplinary enquiry, as there was confession of guilt in the enquiry. His complaint of unfair labour practice was dismissed by the labour court. In revision the Industrial Court directed his reinstatement without back wages. However, in the writ petition before the Hon'ble High Court of Bombay, it was held that the Industrial Court has virtually re-appreciated the evidence in its revisional jurisdiction; that admission of guilt by workman in the enquiry proceedings was categoric and unambiguous and thus the punishment of dismissal cannot be regarded as disproportionate.

It is in the above context, observed by the Hon'ble High Court that Labour and Industrial Courts, when they deal with challenges to findings in disciplinary enquiries must reflect a robust awareness of the realities of the economic situation; that serious cases of misconduct such as those of involving theft of the property of the employer have to be dealt with severely and that once a serious act of misconduct is proved, in a fair enquiry, the approach of the Labour Courts should not be to embark upon a search to find just any technical lapse or lacunae to vitiate the enquiry.

24. Viz-a-viz the above observations made in the set of facts in the above mentioned case, in the instant case (where it is as good as not conducting of an enquiry by Party II in the charge sheet dated 18-3-99), the burden was on Party II to prove the misconduct alleged in the charge sheet dated 18-3-99 by leading evidence before this court, which Party II has failed. Thus, at no stretch of imagination, the observations made in the above case can be imported in the instant case.

25. In the judgment in the case of **Homba Gowda (supra),** the observations therein are on the subject of jurisdiction vested in the Tribunal u/s 11-A of the Act, while dealing with punishment. This judgment indicates that the jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. It also indicates that the interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. It also states that assaulting a superior at a work place amounts to an act of gross indiscipline. Similar is the case with the judgment in the case of **U.P. State Road Transport Corporation (supra)** in which the driver of the Corporation was held guilty of the misconduct of abusing and threatening to assault the cashier and was awarded punishment of removal from service. The Labour Court set aside the order of removal and substituted it by the punishment of stoppage one wage increment and payment of 50% of the back wages. The Writ Petition filed before the Hon'ble High Court was dismissed summarily, The Hon'ble Apex Court however held that the charge against the driver was a serious charge and thus the discretion exercised by the Labour Court was capricious and arbitrary. It was also held that the punishment awarded was not shockingly disproportionate to the nature of charge found proved against the said driver.

26. It may be mentioned here that the facts in the above cases are totally different from the facts in the instant case, though the observations made in the above judgments which are in those peculiar facts cannot be disputed. However, said observations cannot be applied to the instant case where in Party II has failed to prove the misconduct by Party I as envisaged in the charge sheet dated 18-3-99, by leading convincing evidence before this Court. In such scenario, it would be inappropriate to conclude that punishment of dismissal imposed on Party I workman vide letter dated 2-8-99, could be the one imposed by a reasonable person. This is more because, Party II has failed to establish that there was assault by Party I workman on Shri P. Suresh Rao, at the workplace resulting into gross indiscipline. Thus, the observations in the above--mentioned judgment are of no help to Party II to advance its case.

27. In the judgment in the case of **Madhya Pradesh Electricity Board (supra),** a muster roll labourer in the appellant organization had physically assaulted his superior officer and after domestic enquiry, his services were terminated. Labour Court held that the said punishment was harsh and directed his reinstatement with back wages. In appeal, the Industrial Court restored the order of termination and in the writ petition the Hon'ble High Court upheld the order of the Labour Court. However, in civil appeal, the Hon'ble Apex Court set aside the orders of Labour Court and the Hon'ble High Court and upheld the order passed by the Industrial Court by observing that when punishment of termination is awarded for hitting and injuring a superior officer, with no extenuating circumstances established, it cannot be said to be not justified and it cannot be termed unduly harsh or disproportionate.

28. As stated in the preceding paras, the observations above do not apply to the set of facts in the instant case in which Party II has failed to prove the charges of misconduct levelled against Party I workman in the charge sheet dated 18-3-99 as well as in the letter dated 2-8-99.

29. In the case of **Orissa Cement (supra***)*, the workman was sought to be dismissed from services for abusing his superior officer in vulgar and filthy language. The domestic enquiry was not held but in the application for permission, the employer adduced evidence and the Industrial Court held the workman guilty of misconduct alleged against him but refused to grant permission on the grounds that the concerned workman had tendered an apology to the concerned officer, which apology was found

by the Hon'ble Apex Court to be conditional only and as such the order of Tribunal refusing permission prayed for, was set aside.

30. It is noted that the fact situation in the above case is totally different from the fact situation in the instant case and therefore the ratio in the above case, cannot be applied to the instant case.

31. In the case of **Mahindra and Mahindra (supra)** the employee of the appellant was dismissed from service after inquiry for misconduct of using abusive and filthy language against his superior in the presence of subordinates not only once but twice. Labour Court held that punishment was harsh and thus ordered reinstatement with 2/3rd back wages. The Hon'ble Apex Court in appeal, restored the order of dismissal by observing that the language used by the workman is such that it cannot be tolerated by any civilized society and the use of such abusive language against a superior officer in the presence of subordinates, cannot be termed to be an indiscipline calling for lesser punishment in the absence of extenuating factor. Similar are the facts in the case of **New Shorrock Mills (Supra)** in which badli workman was found guilty in the departmental enquiry for abusing the deputy manager and threatening that the Mill Officers would not be safe outside the mill and that he might murder a few of them and therefore he was discharged. The Labour Court though came to the conclusion that the finding of the departmental enquiry was legal and proper; that the order of discharge was not by way of victimization; that the workmen had misbehaved and the workman was thus guilty of misconduct, interfered with the punishment awarded and ordered his reinstatement with 40% backwages. In these circumstances it was held that the punishment of discharge imposed upon the workman was held as not disproportionate so as to warrant judicial interference. The Labour Court should not have set aside the order of discharge by substituting the same with the order of reinstatement, as the punishment imposed by the management was not disproportionate warranting interference by the labour court.

32. As pointed out by me in discussion supra, the facts in both the above cases are totally different from the facts in the case in hand in which Party II has failed to prove the charges of misconduct levelled against Party I workman and hence the observations above cannot be applied to the instant case.

33. Thus, discussion supra makes it clear that Party II has totally failed to prove issue No. 5. Hence my findings on issue Nos. 4 and 5. It therefore follows that dismissal of Party workman from services w. e. f. 2-8-99, is illegal and unjustified.

34. *Issue No. 2:* Since Party II has failed to prove issue No. 5, the question of Party I proving this issue does not arise and hence my findings.

35. *Issue No.3:* I have already discussed while answering issue No.1 above, that Party I workers are the office bearers of Party I union. It is also clear from the pleadings in para 5 of the claim statement that Shri Agnelo Estebeiro at the relevant time was the General Secretary of the union. In para 3 of the written statement it is the plea of Party II that only the President/General Secretary as on the date of filing claim statement can have authority to sign the statement of claim. This being the case, the claim statement signed by Party I, is maintainable.

36. Even otherwise, records reveal that my ld. predecessor vide order dated 25-8-04 (Exb.25) on the application for interim relief filed by Party I/ /Workmen had directed Party II to pay to Party I/ /Workmen certain amount as subsistence allowance as per the dates mentioned in the order and this order was challenged by Party II before the Hon'ble High Court of Bombay at Goa in which Party I/Union was one of the respondents. It is apparent from the records that said Party I union was represented before the Hon'ble High Court by the very same advocate Shri M. P. Almeida who has been representing the said union before this Court and Adv. Shri M. P. Almeida also submitted across the bar that the office bearers of the union represented by him before the Hon'ble High Court and before this Court are the same. This being the case, it becomes clear that the objection raised by Party II on the maintainability of the claim statement on the grounds that the so called office bearers have no authority to represent the workers, merit no consideration. Hence my findings.

37. *Issue No. 6:* Party I workman has prayed to hold the action of management in discharging his services w. e. f. 2-8-99 as illegal and bad in law and to direct the management to reinstate him back in the services with continuity of services and full back wages w. e. f. 2-8-1999. Discussion supra makes it clear that Party II has failed to prove that Party I workman is guilty of misconduct. Thus, his dismissal from service w. e. f. 2-8-99 is apparently illegal and unjustified.

38. As regards the claim of Party I workman of back wages, ld. advocate for Party II stated that the law on the subject is well settled, which is that upon holding the termination as illegal and

unjustified, back wages is not a natural consequence. He stated that for claiming back wages the person concerned has to show that he was not gainfully employed and that the initial burden lies on him. He stated that after the concerned person places material in that regard, the employer can bring on record materials to rebut the claim. He relied on the judgment in the case of **Kendriya Vidyalaya Sangathan and another v/s S. C. Sharma (2005) 2 SCC 363**, in which the above principle has been culled out.

39. It may be mentioned here that in the claim statement Party I workmen have pleaded that till date they are unemployed. Workman herein has not stepped in the witness box and thus there is no statement by him on oath, to the effect that he is unemployed till date. Pleadings without proof cannot be accepted. Thus, I have every reason to hold that this workman has failed to discharge the initial burden resting on him. Being so, the question of Party II bringing on record materials to prove otherwise, does not arise. Consequently, it follows that Party I workman has failed to establish that he is unemployed. Thus, he is not entitled to claim back wages.

40. As regards the claim of Party I workman to reinstate him with continuity in service, ld. advocate for Party I submitted that once it is established that the termination was illegal and unjustified, Party I/Workman is bound to be reinstated with continuity in service. However, Ld. advocate for Party II submitted that present reference is of the year 2000 and thus long period has lapsed by now. He stated that by now the age of Party I workman has also been advanced. According to him, relation between Party I workman and Party II is now strained and that the financial condition of Party II establishment is also not sound. Thus, he stated that the question of reinstatement of Party I workman with continuity in service, does not arise.

41. Ld. advocate for Party II also referred to the evidence of Shri Y. K. Govil and Shri T. K. Tickoo contending that on 30-8-99 both these witnesses and one Mr. Sharma, who are the officers of Party II were assaulted by Party I workers and others and therefore the conduct of Party I workman post termination of his services also needs to be looked into for deciding the aspect of his reinstatement in service. However, Ld. Advocate for Party I stated that Party II has failed to show the involvement of Party I workman in the alleged incident dated 30-8-99 and even otherwise, the said incident has no bearing on the dispute being adjudicated. As such, according to Ld. Advocate for Party I, the alleged incident dated 30-8-99 cannot come in the way of Party I workman for claiming reinstatement in service.

42. In their evidence both Shri Y. K. Govil and Shri T. K. Tickoo, have in short stated that on 30-8-99 the workmen namely, Mr. Caitano J. Fernandes, Mr. Caitano M. Fernandes, Mr Conceicao Hilario, Mr. Umashankar Yadav, Mr. Jayaprakash Yadav, Mr. Agnelo Estebeiro and Mr. Mestrilal R. Sajiwan assaulted, abused and gave them threats of killing. They have stated that the aforesaid workmen also assaulted Mr. K. K. Sharma, due to which all of them suffered injuries and they were hospitalized. However, both these witnesses have categorically stated that they were unable to produce the police complaints as well as the medical reports, as the company is unable to trace the same.

43. In his cross-examination, Shri Y. K. Govil has stated that apart from workers whose names are stated by him, there were another 50 persons at the spot and 30 amongst them were the workers. He has stated that he did not file written complaint with the management but orally informed Mr. R. K. Radhakrishanan and Mr. K. Raghavendran about this incident. He has denied the suggestion that they were beaten by the people of locality and not by the workmen, as they were keeping the furnace on and polluting the atmosphere, throughout the day.

44. In his cross-examination Shri T. K. Tickoo has stated that he had given the names of the workers as stated by him in the chief examination along with other names, to the police. His cross--examination further reveals that he does not know as to how many persons by name Caetano, Conceicao, Yadav and Sajiwan were working with Party II at the relevant time.

45. It may be mentioned here that Shri K. Raghavendran has produced the copy of a letter dated 30-8-1999 by Mrs. Gyan D'sa, the Executive Secretary addressed to Executive Director of Party II informing about the incident which occurred on 30-8-99, at Exb.64. He has also produced a copy of complaint dated 30-8-99 by Shri Chandra Bhushan Mishra made to Police and other authorities, at Exb.64 and copy of F.I.R. dated 30-8-99 at Exb.66, despite Shri Govil and Shri Tikoo stating that they were unable to produce police complaint as the company is not able to trace the same. Nevertheless, reading of all the above three documents make it clear beyond doubt that names of Party I workmen are not reflected in the same and therefore these documents cannot lead the case of Party II any further to show the involvement of the workman herein in the incident dated 30-8-99.

46. This being the case, I find force in the submissions of ld. advocate for Party I that there is no any documentary evidence on record showing the involvement of Party I workman in the incident narrated by Shri Govil and Shri Tickoo. Admittedly, both the above witnesses have also not produced copies of any medical records to substantiate their case that they and Mr. K. K. Sharma were seriously injured on account of the assault by Party I/ /workmen. No doubt, there is admission by Party I to the effect that Shri Govil and Shri Tickoo were beaten by people of the locality but this by itself cannot relieve Party II from proving their case of assault by Party I/ workman. That apart, Shri Govil has stated that he had orally informed Mr. Radhakrishnan and Mr. K. Raghavendran about this incident but Shri Radhakrishanan who has been examined by Party II, is silent on this aspect of the matter. Further, it appears from the statements made by Shri Tickoo that he does not even know as to how many persons by name Caetano, Conceicao, Yadav and Sajiwan were working with Party II at the relevant time and this statement of Shri Tickoo casts serious doubt on the identification of the workers who are stated to have involved in this incident, from amongst total number of 50 and odd persons who were present at the spot, at the relevant time.

47. Being so, I am of the considered opinion that the evidence adduced by Party II in support of proof of incident dated 30-8-99 is not at all convincing to say that Party II has succeeded in establishing even the probable occurrence of this incident, with involvement of the workman herein.

48. As regards the evidence of Shri Alexander Rodrigues, he has produced on record copy of balance sheet and profit and loss account of Party II for the period from 1-4-09 to 31-3-13 (Exb.124-colly), letter dated 19-6-13 from Electricity Department (Exb.125), copy of order dated 20-8-99 (Exb.126) and copy of order dated 1-8-13 by BIFR (Exb.127) passed during review hearing, to establish that financial condition of Party II is not sound. In his cross examination, to the suggestion that all the above documents are false and fabricated and that BIFR has been misled on the basis of such documents to declare Party II as sick unit, has been denied by Shri Alexander Rodrigues.

49. No doubt, it appears from the above documentary evidence that Party II is not financially stable, but this by itself cannot be a ground to reject relief to Party I workman, to which he is legally entitled. This is because, once it is established that termination is illegal and unjustified, the natural consequence that follows is of reinstatement in service and Party I workman cannot be deprived of the same. Even for that matter, lapse of time, advanced age, strained relations or weak financial condition of company cannot be the grounds for rejecting the relief of reinstatement to which Party I workman is legally entitled. Nonetheless, the above factors can definitely be looked into to mould the relief to which the Party I workman is entitled to and this is because Party I workman has not established that he is not gainfully employed. This in other words mean that Party I workman must be earning his livelihood and it is precisely for this reason the statement on the subject of gainful unemployment is not made by him on oath.

50. In the judgment in the case of **Incharge Officer & Anr v/s Shankar Shetty 2010(9) SCC 126 and Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors AIR 2010 SC 2140,** the Apex Court has reiterated that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice ..."*

51. In the light of above position of law viz-a-viz the fact situation in the instant case, I am of the opinion that grant of reasonable compensation to Party I workman, would meet the ends of justice.

52. In para 2 of the claim statement, it is pleaded that Shri Mestrilal Sajiwan was appointed on 1-10-94; was confirmed w. e. f. 1-4-95 and he received a salary of Rs. 2,550/- p.m. and there were increments.

53. Considering the totality of the facts such as the quantum of salary paid to Party I workman, the number of years he has worked, the period of time taken for disposal of the present reference and the mental and physical hardships undergone by the workman during the pendency of adjudication of this dispute, I am of the considered opinion that ends of justice would be met by granting him total compensation of Rs.1,60,000/- which compensation in my view shall be appropriate, just and equitable in the circumstances of this case.

54. Records reveal that vide order dated 25-08-04 (Exb.25) my ld. predecessor had partly allowed the application for interim relief filed by Party I workmen, by ordering that Party II shall pay to Party I workmen 50% of their last drawn wages as subsistence allowance from the date of their dismissal from service i.e. from 2-8-99 till the final award is passed in this reference. It is also observed in this order that payment of this subsistence allowance is subject to the final order that may be passed in the award on the issue of back wages. Records further reveal that Party II challenged the above order before the Hon'ble High Court of Bombay at Goa in W. P. No.460/2004 and the order was stayed subject to deposit of entire monetary liability flowing from the impugned order within 10 weeks from the day of the passing of the order which was passed by the Hon'ble High Court on 2-8-06. It is observed in this order that in the event of such deposit, the Registry is directed to invest this amount in any nationalized bank, initially for a period of 36 months and shall keep the said investment renewed from time to time until further orders. Records also reveal that vide order dated 10-6-13, the Hon'ble High Court while directing this Tribunal to dispose off the present reference as expeditiously as possible and in any event on or before 31-6-14, ordered that during the pendency of this reference the interim order passed on 2-8-06 shall continue until disposal of this reference and the amount deposited pursuant to the said interim order shall be subject to the final result in the reference proceedings. Ld. advocates however were not able to state during the arguments before this court, about quantum of amount deposited before the Hon'ble High Court.

55. Nevertheless, since discussion supra makes it clear that the workman is not entitled to claim back wages but to the compensation, as stated above, I am of the considered view that the amount if deposited before the Hon'ble High Court in W.P. No.460 of 2004, pursuant to order dt. 2-8-2006, shall be adjusted towards the above amount of compensation awarded to the workman. In case the said amount along with interest accrued on it, is more than what has now been awarded to the workman, the balance amount shall to be refunded to Party II and in case the said amount along with interest accrued on it, is less than what has now been awarded to the workman, than Party II shall pay the said balance amount to the workman accordingly. Hence my findings.

56. In the result and in view of discussion supra, I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Marmagoa Steel Limited, Curtorim (Employer), in dismissing from the services Mr. Mestrilal R. Sajiwan, who is the office bearer of the recognized Trade Union, with effect from 02-08-99, is illegal and unjustified.
2. It is hereby further held that the reference as against the workmen Mr. Agnelo Estebeiro and Mr. Indal Prasad Gupta, does not survive.
3. The Party II is directed to pay to the workman Mr. Mestrilal R. Sajiwan monetary compensation of Rs. 1,60,000/- (Rupees one lakh sixty thousand only), within two months from the date of publication of Award failing which the same shall carry interest at the rate 9% p.a.

Inform the Government accordingly.

Sd/-
(Ms. Bimba K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I

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Notification

No. 28/1/2014-Lab/261

The following award passed by the Labour Court-II, at Panaji-Goa on 12-03-2014 in reference No. LC-II/IT/27/2013 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 5th May, 2014.

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IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. LC-II/IT/27/2013

Shri Deepak S. Shinde,
Rep. by the President,
Goa Trade and Commercial Workers' Union,
Velho's Bldg., 2nd Floor,
Opp. Municipal Garden,
Panaji - Goa ..... Workman/Party I

V/s

M/s. Apna Bazar Co-operative,
Aquem,
Margao-Goa ..... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri A. K. Dessai.

Panaji, Dated: 12-03-2014.

AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 21-08-2013, bearing No. 28/36/2013-LAB/578, referred the following dispute for adjudication by the Industrial Tribunal of Goa at Panaji-Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Panaji-Goa in turn assigned the present reference for its adjudication to this Labour Court-II, Panaji-Goa vide its order dated 22-08-2013.

"(1) Whether the severance of employee--employer relationship between Shri Deepak S. Shinde, Shop Assistant, and the management of M/s. Apna Bazar Co-operative, Aquem, Margao, Goa, with effect from 01-11-2010 is a consequence of refusal of employment by the said management or an instance of voluntary resignation by the workman?

(2) In either case, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/27/2013 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. That neither the Workman filed his claim statement nor did the Employer file its written statement. That on 07-01-2014, the Ld. Advocates appearing for the respective parties orally submitted that the matter is likely to be settled amicably between the parties and sought time to settle the matter amicably. Accordingly on 11-03-2014, both the parties along with their advocates respectively remained present and filed a joint application for consent award which is on record at Exb.7. The terms of settlement as stated in the said application for consent award are reproduced hereunder:

1. The Employer/Party II has agreed to pay to the workman Shri Deepak Shinde sum of Rs. 25,000/- (Rupees twenty five thousand only) vide Cheque No. 002837 dt.12-03-2014, Bank of India Branch towards his full and final settlement arising out of employment with Party II/Employer.
2. The Workman agrees to accept the same and affirms that he has no dispute of whatsoever nature against the Employer.
3. The Employer also agrees to issue Bonafide Service Certificate to the Workman.

I have carefully perused the said application for consent award, jointly filed by the parties. I am of the opinion that the said terms of settlement are beneficial to the Workman and hence consented for the same. Since the dispute under reference is settled between the parties I hold that the dispute under present reference does not survive.

In view of the above, I proceed to pass the following order:

ORDER

It is held that in view of amicable settlement between the parties, the dispute as to whether the severance of employee-employer relationship between Shri Deepak S. Shinde, Shop Assistant, and the management of M/s. Apna Bazar Co-operative, Aquem, Margao, Goa, with effect from 01-11-2010 is a consequence of refusal of employment by the said management or an instance of voluntary resignation by the workman, does not survive.

2. The workman, Shri Deepak S. Shinde is not entitled to any relief.

3. No order as to costs.

4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

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Notification

28/1/2014-LAB/112

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 10-12-2013 in reference No. IT/79/02 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 10th February, 2014.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/79/02

Workman rep. by
General Secretary,
Gomantak Mazdoor Sangh,
3rd Floor, Shetia Sankul, Tisk,
Ponda, Goa ....Workmen/Party I

V/s

M/s. Nestle India Ltd.,
Usgao, Goa ....Employer/Party II

Adv. Shri P. Anaonkar with Shri P. Gaonkar for Workmen/Party I.

Adv. Shri R. Pai with Adv. Shri M. S. Bandodkar for Employer/Party II.

AWARD

(Passed on 10th day of December, 2013)

By order dated 28-11-2002, bearing No. 28/62/ /2002-LAB, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the 25 points of Charter of Demands served by the Gomantak Mazdoor Sangh on behalf of the workman on the management of M/s. Nestle India Ltd., Usgao, Goa, is genuine and justified?

(2) If the answer to (1) above is in the affirmative, then, whether the action of the management of M/s. Nestle India Ltd., Usgao, Goa in not settling the above demands of the Union is legal and justified?

(3) If the answer to (2) above is in the negative then what relief the workmen are entitled to?"

2. Upon receipt of the reference, it was registered as IT/79/02 and registered AD notices were issued to both the parties. Pursuant to service of notices Adv. Shri P. Gaonkar appeared for Party I and Adv. Shri M. S. Bandodkar appeared for Party II. Party I filed the claim statement at Exb. 3 and Party II filed the written statement at Exb. 5. Party I then filed the rejoinder at Exb. 6.

3. In the claim statement it is in short the case of Party I that Gomantak Mazdoor Sangh (for short the Sangh) is a registered trade union under the Indian Trade Union's Act, 1926 and it has been representing practically all the workmen of Party II. It is stated that the factory of Party II is engaged in manufacturing various types of chocolates, a fast selling consumer product in the country. It is stated that Party II has been implementing various unfair labour practices. It is stated that if the workers decide themselves to organize, the management immediately pressurized the workers and fix them in fake, false and fabricated cases. It is stated that the company also pressurized the workers to work on overtime but not paid the overtime wages in accordance with the provisions of Factory Act and due to all such activities of Party II the workers joined the Sangh and became the members of the Sangh. It is stated that thereafter the General Secretary of the Sangh informed the company of the formation of the union and submitted the charter of demands on their behalf. It is stated that despite requests from the union, the company refused to negotiate and unilaterally gave rise to the workers to break the union. It is stated that in order to avoid the confrontation the Sangh signed minutes of conciliation on 20-1-01 however thereafter the management started harassing the office bearers, committee members and active members. It is stated that in the month of October, 2001 the notice of termination of the understanding was served as the same was for the period of one year and a fresh charter of demand dated 14-10-01 was served. It is stated that the company refused to negotiate with the union and hence an industrial dispute was raised before the Asstt. Labour Commissioner, Ponda but due to adamant attitude of the company the matter ended in failure. It is stated that the company has made huge profit and they are increasing every year and thus the company's financial position is excellent and the company can easily bear financial burden that may be imposed upon it. Party I has mentioned the demands made in the claim statement which are as under:

Demand No. 1: Pay scales:

Grade I: 1000-60-1300-70-1650-80-2050-90-2500--100-3000-110-3550.

Grade II: 1100-65-1425-75-1800-85-2225-95-2780--105-3305-115-3880.

Grade III: 1200-70-1550-80-1960-90-2400-100-2900--110-3450-120-4050.

Grade IV: 1300-75-1700-85-2125-95-2600-105-3125--115-3700-125-4325.

Grade V: 1500-80-1900-90-2350-100-2850-110-3400--120-4000-130-4650.

Demand No. 2: Flat Rise:

Union demands that all the workmen shall be given flat rise at the rate of Rs. 1000/-. The above amounts shall be added to the existing basic and thereafter fitted in the respective revised pay scale in the higher stage.

Demand No. 3: Seniority increments:

Union demands that the workmen should be paid given seniority increments as mentioned below:

Service upto 3 years : One increment.
Service from 3 years to five years : Two increments.
Service above 5 years : Three increments.

Demand No. 4: Variable Dearness Allowances:

Union demands that present rate of the VDA is very less and hence the same shall be paid at the revised rate of Rs. 4/- per point rise beyond 1900 points (1960 = 100) the computation of VDA shall be made quarterly based on the average consumer price index of preceding quarter. The amount of VDA upto 1900 points shall be merged with the existing FDA.

Demand No. 5: House Rent Allowance:

Union demands that HRA should be paid at the revised rate of 60% of Basic, FDA and Variable Dearness Allowance, as the cost of accommodation is very high in Goa due to Tourist State.

Demand No. 6: Education Allowance:

The Union demands that the Education Allowance shall be paid @ Rs.1000/- per workmen per month considering the high cost of education in Goa.

Demand No. 7: Transport Allowance:

The Union demands that those workmen who are not provided with the transport facility shall be paid Transport Allowance at the rate of Rs. 2500/- per month.

Demand No. 8: Paid Holidays:

Union demands that all the workmen shall be granted paid holidays at the rate of 15 days per year.

Demand No. 9: Leave:

Union demands that all the workers should be given leave on following basis:

A) Earned Leave: Union demands that at all the workmen should be given earned leave at the rate of 35 days E. L. per year with accumulation upto 150 days and leave shall be allowed to be taken 10 times in a year.

B) Casual Leave : Union demands that all the workmen should be given Casual Leave at the rate of 15 days per year.

C) Sick Leave: Union demands that all the workmen should be given Sick Leave at the rate of 20 days per year, and accumulation up to 60 days be given.

Demand No. 10: Leave Travel Assistance:

Union demands that LTA should be paid at the revised rate of three months gross wages, every year.

Demand No. 11: Medical Allowance:

Union demands that those workmen who are out of side the purview of ESIC shall be reimbursed all the medical expenses incurred by him for self and shall be paid @ 10% of Basic, FDA and VDA per month towards the medical expenses for their dependents by the management.

Demand No.12: Promotion Policy:

Union demands that separate promotion policy should be promulgated in consultation with the union. The detail promotion policy will be submitted to the management at the time of negotiations.

Demand No. 13: Gifts:

Union demands that the workmen should be given service award as mentioned below:
Service up to 5 years: Gift worth Rs. 5000/- with service certificate.

Service above 5 years: Gift worth Rs.7500/- with service certificate.

Demand No.14: Bonus/Ex-Gratia:

Union demands that all the workers shall be paid 25% of Bonus/Ex-gratia without any ceiling before Diwali every year.

Demand No. 15: Festival Advance:

Union demands that all the workers should be granted festival advance at the rate of Rs. 5000/- once in a year to be deducted in 10 equal installments.

Demands No.16: Accident Benefits:

Union demands that those workers who meet in the accident while on duty shall be granted special leave and shall be reimbursed all the medical expenses.

Demand No. 17: Welfare Fund:

Union demands that separate welfare fund shall be constituted and the equal contribution shall be remitted by the management. The detail of the fund and their object and regulation will be given at the time of negotiations.

Demand No.18: Outstation Allowance:

Union demands that those workmen who are required to work on Outstation duty within Goa,

they shall be paid Outstation Allowance at the rate of Rs. 150/- per day and Rs. 300/- per day for out of State. In addition to the actual travelling and lodging expenses.

Demand No. 19: Payment of Gratuity:

Union demands that all the workmen who have worked for more than 5 years shall be paid gratuity at the rate of 30 days wages per year of service.

Demand No. 20: Special Compensatory Allowance:

The union demands that all the workers shall be paid Special Compensatory Allowance at the revised rate of Rs. 1500/- per month.

Demand No. 21: Free Transport Facility to and fro in all shifts:

Union demands that the public transport is not available in shifts, hence free transport facility should be provided to the workmen. The detail routes shall be submitted at the time of negotiations.

Demand No. 22: Dormitory:

Union demands that those workmen who are required to work in shifts and transport facility is not given, Dormitory facility to be provided to such workmen near the factory.

Demand No. 23: Shift Allowance:

Union demands that those workmen who are working in shift shall be paid Shift Allowance at the rate of Rs. 50/- per day in 1st shift & 2nd shift and Rs. 60/- per day in the third shift.

Demand No. 24: Special Allowance:

The Union demands that those workmen who are doing the multiskilled work shall be paid allowance @ Rs. 750/- per month.

Demand No. 25: Compensatory Off:

Union demands that those workmen who are required to work on weekly off days and holidays shall be given compensatory off and overtime at twice the rate of normal wages.

4. Party I in the claim statement has given its justification for each of its demands and has prayed to declare that the demands are genuine and reasonable and to grant the same from the date of charter of demands.

5. In the written statement Party II has raised the preliminary objections by stating that the order of reference is incompetent and bad in law as the dispute is not covered by Sec. 2-A of the Act; that the Sangh has no locus standi or representative character to raise any dispute on behalf of the workmen of Party II and that the dispute has not been validly and properly espoused to take the character of an industrial dispute. It is also stated that the order of reference is vague and lacks materials particulars; that no details of the demands have been given in the first item of the schedule to the order of reference; that the court derives jurisdiction from the order of reference and the matter/demands on which the adjudication is sought for must be mentioned in the order of reference and must form a part and parcel of the order of reference. It is stated that no demand has been referred for adjudication to this court. It is stated that pursuant to mutual agreement the emoluments of the workmen are revised every year and therefore the demands raised purported to be on behalf of the workmen are barred in view of the mutual agreement between the company and its workmen. It is stated that Mr. P. Gaonkar who has signed the claim statement as the General Secretary of the Sangh is not competent and authorized to sign the claim statement on behalf of the workmen and that the workmen are not entitled to any relief whatsoever. It is stated that the demands containing matters which are governed by specific statutes are incapable of adjudication. It is stated that from the inception of the factory the management has revised the emoluments of the workers each year on the basis of the performance of the workers and considering the emoluments paid by other concerns in the region on the basis of well established principle of industry cum region. It is stated that through a letter from General Secretary, GMS claiming that the workers have formed a union was received by the company, no documentation of authenticity was shown to the company to that effect. It is stated that the company filed its written comments before the Asstt. Labour Commissioner in response to the charter of demands and that the minutes of presentation to the union shows that the Sangh had accepted the system as mentioned in the minutes dated 20-1-01 signed before the Asstt. Labour Commissioner, Ponda. It is stated that having given increase in emoluments in reference to minutes dated 20-1-01 all the demands of the Sangh in the claim statement do not stand any value and ought to be rejected on this ground alone. It is stated that the union has no power to terminate the written settlement or understanding and the charter of demands dated 14-10-01 is not maintainable and is bad in law. It is stated that the workmen have accepted the revision of their emoluments every year and therefore the question of negotiations of charter of demand dated 14-10-01 does not arise. It is stated that the factory of company at Usgao has not derived any profits and is infact running in losses. It is stated that the increase in production is also due to the fact of the investment

made by the company in extensive training for development of the skill of workforce to meet the norms of productive standard, which was otherwise low and thus the credit cannot be taken by the workers alone. It is stated that the profit of the company has nothing to do with the contribution of the factory at Usgao. It is stated that Party II did not receive any letter from workmen saying that they joined the union.

6. As regards the demands raised by Party I it is stated by Party II that there is no justification for making such demands and that they are unreasonable. It is stated that the union has failed to make out any case and that no case exist for granting/considering any of the demands made by the union so also that the demands are not genuine, rational and hence ought to be rejected.

7. In the rejoinder Party I has controverted the defence set up by Party II in their written statement.

8. On the basis of above pleadings of the respective parties issues dated 3-7-03 were framed at Exb. 7.

9. In the course of evidence Party I examined Shri P. Gaonkar as witness No. 1, Shri Somnath Prabhudessai as witness No. 2 and Shri Prakash Rane as witness No. 3. On the other hand Party II examined Shri Vivek Kumar as witness No. 1 and Shri Naresh Prabhu as witness No. 2 and closed the case.

10. Heard at length Adv. Shri P. Anaonkar for Party I and Ld. Adv. Shri R. Pai for Party II. Both the parties have also filed written submissions.

11. I have gone through the records of the case and have duly considered the arguments advanced. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Party I/union proves that it has locus standi to espouse the dispute on behalf of the workmen and whether Mr. P. Gaonkar is competent and authorized to sign the claim statement on behalf of the workmen?	In the negative.
2.	Whether the Party I/union proves that the demands served by it on the employer/Party II are genuine and justified?	In the negative.
3.	Whether the Party I/union proves that the action of the employer/ /Party II in not settling the demands is not legal and justified?	In the negative.
4.	Whether the employer/Party II proves that the disputes referred is not an industrial dispute within the meaning of Sec. 2(k) of the I.D. Act, 1947?	In the positive.
5.	Whether the employer/Party II proves that the reference is not maintainable because the demands are barred in view of mutual agreement between them and the workmen?	In the positive.
6.	Whether the employer/Party II proves that the order of reference is vague and incapable of adjudication?	In the positive.
7.	Whether the workmen are entitled.. to any relief?	In the negative.
8.	What Award?	As per Order below.

REASONS

12. *Issue No.1:* In order to prove this issue, Party I/ /Union has to show nexus between it and the workmen on whose behalf the dispute has been espoused by it and also that the workmen have authorized Shri P. Gaonkar to sign the claim statement. Party I in para 8 of the claim statement have pleaded that after all the workers becoming the members of the Sangh, the General Secretary of the Sangh informed the company about the formation of the union and also submitted the Charter of Demands on their behalf. In reply to this para vide para 8 of the written statement, Party II has admitted of having received the above letter from the General Secretary of the Sangh but has further stated that no documentation of authenticity were shown to the company to substantiate the contents of the said letter. In his examination in chief Shri P. Gaonkar had produced letters dated 24-9-00 signed by the workers of Party II stating that they are joining the Sangh and authorizing him to represent them before the management and other authorities, at Exb. W-1 colly. He has stated that in all 122 workers signed the above letters. He has produced xerox copy of letter dated 25-9-00 written by him to Party II informing that their workers have joined the Sangh, at Exb.W-2 colly. In his cross examination he has stated that does not remember the exact date on which the letter dated 24-9-00 at Exb. W-1 colly was received by him. He has denied the suggestion that he has not enrolled the workers as the members of the union and that he has sent the letter dated 25-9-00 at Exb. W-2 colly without enrolling the workers as the members of the union.

He has also denied the suggestion that the letter dated 24-9-00 at Exb. W-1 colly was not received by him on the date when the letter at Exb. W-2 colly was sent to Party II.

13. In his arguments Ld. Adv. for Party I invited my attention to para 7 and 8 of the claim statement wherein Party I has pleaded that all the workers joined the Sangh and accordingly became the members of the Sangh and after they became the members, the General Secretary of the Sangh informed the company about the formation of the union and submitted the charter of demands on their behalf. He stated that in para 1 and 4 of the written statement Party II has stated that the subject matter of the dispute referred for adjudication to this court is regarding the charter of demands raised by GMS and that the statement of claim has been signed by Mr. P. Gaonkar as the General Secretary of the Sangh. Thus, according to him, the above pleadings made by Party II make it clear beyond doubt that the workers to this reference have joined the Sangh and that Shri P. Gaonkar is the General Secretary of the Sangh and therefore he is competent and authorized to sign the claim statement on behalf of the workmen. By referring to the contents of letters at Exb. W-1 colly which are signed by about 122 workers and addressed to the General Secretary of the GMS informing that they would like to join GMS; that they shall abide rules and regulations of the union and that they authorize the General Secretary of the GMS to represent them before the management the Ld. Adv. for Party I submitted that the workers have authorized Shri P. Gaonkar who is the General Secretary of the union to represent then and to espouse the dispute on their behalf and consequently Shri P. Gaonkar is competent and is authorized to sign the claim statement on behalf of the workmen. He then invited my attention to the charter of demands dated 14-10-01 at Exb. W-3 colly signed by Shri P. Gaonkar as General Secretary and also the settlements dated 29-12-09 and 29-12-10 signed by Shri P. Gaonkar as General Secretary. He stated that the written settlement/understanding dated 20-01-01 (Exb. 55) is also signed by Shri P. Gaonkar and thus according to him the company has accepted Shri P. Gaonkar as the General Secretary of the Sangh.

14. On the other hand, Ld. Advocate for Party II by referring to Exb. W-1 colly stated that in this document the workmen have only stated that they would like to join their union and not that they have joined the union and therefore these letters are not the letters indicating that the workmen have joined Party I/union. By referring to schedule 1 to the terms of reference, Ld. Adv. for Party II stated that this schedule states that 25 points of charter of demand are served by GMS on behalf of the workmen and it does not say that the same are served by the workmen. He stated that letter at Exb.W-2 colly does not indicate as to when the workers had become the members of the Sangh prior to sending Exb. W-2 colly to Party II. Thus, according to him the letter dated 25-9-00 at Exb. W-2 colly vide which Shri P. Gaonkar as General Secretary of GMS has written to Party II informing that almost all the workmen of Party II factory have joined their union is of no significance to say that as on the date of sending of this letter, the workers had become the members of the union. He also stated that there is no convincing evidence to indicate that the workers herein were the members of the union in the year 2001 when the demands were raised, as, failure report dated 18-9-02 at Exb.94 reveals that it was the General Secretary who had informed the Asstt. Labour Commissioner that Party II was informed about workers joining the union, vide their letter dated 25-09-2000 and thereby there is no material on record to suggest that as in the year 2001 these workers were the members of Party I union. In support of his submissions made as above he relied on the judgements in the case of **Sindhu Resettlement Corporation v/s Industrial Tribunal, Gujarat 1968(1) LLJ 834** and in the case of **Workmen of Dimakuchi Tea Estate v/s Dimakuchi Tea Estate 1958 SCR 1156** the observations in which indicate that an industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen, workmen and workmen and according to him since in the case in hand there is nothing to indicate that the workmen and espoused the dispute, it has to be held that Shri P. Gaonkar had no any authority on behalf of the workmen and that Party I union has no locus standi to espouse the dispute.

15. On the basis of the pleadings in para 8 of the claim statement and para 8 of the written statement, it becomes clear that Party II has disputed the fact of workers joining the Sangh prior to Party I sending letter at Exb. W-2 colly to Party II. Undoubtedly, pleadings in the claim statement are silent on the date on which the workers joined the Sangh. No documentary evidence is on record to indicate that the letters at Exb. W-1 colly were received by the Sangh on a particular date though these letters are dated 24-09-2000. In his cross

examination Shri P. Gaonkar has also made it clear that he does not remember the exact date on which letters dated 24-09-2000 were received by him. He has however denied the suggestions that he has not enrolled the workers as the members of the union and that he sent Exb.W-2 colly dated 25-09-2000 without enrolling the workers as the members of the union.

16. Apparently, no any particular document has been produced by Party I such as resolution by the workmen authorizing the Sangh and Shri P. Gaonkar as its General Secretary to raise the dispute and also to indicate that the workmen have joined GMS. Ld. Adv. for Party II relied on the judgment in the case of **A. Mathur v/s Allahabad Bank and others 1991(1) LLJ 273** in which it is observed that *"....all the employees do not, as a matter of fact, becomes parties to the agreement. But the settlement signed by such representatives bind those whom they represent."*, and contended that in view of above observations, the representative who claims that the settlement binds certain number of employees has to produce material on record that he represents those employees or that those employees have authorized him to represent them.

17. He also relied on the judgment in the case of **Deepak Industries Ltd., v/s State of West Bengal 1975(1) LLJ 293** in which it is observed as under *"....if a group of workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act, which may be referred to the Tribunal in due course. But when the dispute is sponsored or espoused by a union, it seems to have been uniformly held by the judicial decisions that when the authority of the union is challenged by the employer, it must be proved that the union has been duly authorized either by a resolution by the members or otherwise that it has the authority to represent the workmen whose cause it is espousing."*

18. Ld. Adv. for Party II then relied on the judgment in the case of **Air India Employees' Guild v/s Air India Ltd., 2007 II LLJ 207 (Bom.)** in which the employers decision to verify the membership of staff by secret ballot was challenged by the employees and while dealing with this subject the Hon'ble Court by referring to Clause 9 of Code of Discipline stated that membership of the union for the purpose of recognition has to be counted on the basis of payment of subscription by the workers. By referring to the above judgment, Ld. adv. for Party II stated that Party I ought to have produced subscription towards membership by the workers, to establish that they were the members of the union.

19. It may be mentioned here that the letters at Exb. W-1 colly produced by Shri P. Gaonkar, when read in entirety give clear indication that the workmen have authorized the General Secretary of GMS to represent them before the management and the Government officials including the Tribunal or any other forum in their labour dispute and therefore the words *"would like to join your union"* found in these letters could be read as having meaning that the workmen have joined the union. Nevertheless,, for this purpose, it was required of Party I to have produced cogent and convincing evidence before the court to indicate that the letter dated24-09-2000 (Exb. W-1 colly) was received by the Sangh prior to writing letter dated 25-09-2000 (Exb. W-2 colly) to Party II. Shri P. Gaonkar was unable to give the date on which the Sangh received the letter at Exb. W-1 colly. As regards statements made by Party II in para 1 of the written statement, the same cannot be construed to mean that there is admission on the part of Party II about Sangh raising demands on behalf of the workmen and on the contrary reading of this para in totality makes it clear beyond that Party II has challenged the very locus standi of the Sangh to raise such demands. As far as pleadings in para 4 of the written statement are concerned, reading of the same makes it clear that Party II has challenged the competency and the authority of Shri P. Gaonkar to sign the claim statement on behalf of the workmen.

20. Demands dated 14-10-01 at Exb. W-3 colly are signed by Shri P. Gaonkar in the capacity as General Secretary of the Sangh and in his cross examination Shri P. Gaonkar has not ruled out the possibility of sending Exb. W-3 colly by post but has made it clear that he was unable to produce the acknowledgment as according to him the records are old. Nonetheless, since Party I has not established by way of convincing evidence that it had authority from the workers to raise the demands either by way of a resolution or otherwise, mere signing of Exb. W-3 colly by Shri P. Gaonkar as General Secretary of the Sangh is of no avail to say that the charter of demands raised are maintainable. It may be that settlements dated 29-12-09 and 29-12-10 are signed by Shri P. Gaonkar as the General Secretary of the Sangh but it is not the case of Party I in their pleadings nor it is stated by Shri P. Gaonkar in his evidence that representation of workers by the Sangh or by him as General Secretary of the Sangh

at the time of raising of the charter of demands at Exb. W-3 colly stands established by virtue to the above settlements. Similar is the case with written settlement/understanding at Exb. 55/Exb.W-12, signed by Shri P. Gaonkar.

21. In the judgement in the case of **Deepak Industries (supra)** it is observed that what is required by the union to espouse the dispute on behalf of the workmen is either a resolution or authorization by individual workmen. In the instant case it is not established that Exb. W-1 colly which bear the signature of each of the workmen authorizing the General Secretary of GMS to represent them before the various authorities mentioned therein was sent to the Sangh prior to Sangh sending Exb. W-2 colly to Party II or for that matter if at all it was sent to the Sangh. This is more because in the letter dated 25-9-00 (Exb. W-2 colly) Party I has stated that it would submit the list of members in due course and there is nothing on record to indicate that the said list was thereafter submitted. Even no resolution by the members authorizing the Sangh is on record and therefore it is not justified to say that Party I union has locus standi to espouse the dispute or that Shri P. Gaonkar was authorized to sign the claim statement on behalf of the workmen. Thus, the observations in the judgement in the case of **Sindhu Resettlement and Dimakuchi Tea Estate (both cited supra)** squarely apply to the situation discussed supra because the dispute herein cannot be termed as the one between the employer and the workmen. Even for that matter since the authority of the Sangh to espouse the dispute is challenged by Party II and as the Sangh has failed to establish that it has been duly authorized either by the resolution by the members or otherwise or that it has authority to represent the workmen whose cause it is espousing, the observations in the judgment in the case of **Deepak Industries (Supra)** also apply to the instant case. Further, what is apparent from the observations in the judgment in the case of **Air India (Supra)** is that subscription towards membership establishes that the concerned workers are the members of the union and apparently such documentary evidence is not produced by Party I herein and therefore Party I has failed to prove the aforesaid fact.

22. It therefore follows from above discussion that Party I has failed to prove that it has locus standi to espouse the dispute on behalf of the workmen and consequently that Shri P. Gaonkar is competent and authorized to sign the claim statement on behalf of the workers and hence my findings.

23. *Issue Nos. 2, 4 and 6:* All these issues are answered together for the sake of convenience being interconnected.

24. Ld. Adv. for Party I submitted that the genuineness and justification of the demands depends upon the paying capacity of the employer as per region-cum-industry. He referred to the settlement dated 17-10-01 between Cadbury India Ltd.. and its workmen at Exb. 35, settlement between Colgate Palmolive (India) Ltd., Kundaim Industrial Estate, Goa and their Workmen represented by GMS at Exb. 36 and settlement dated 28-5-00 between M/s. Glaxo Smithline Consumer Healthcare and their workmen at Exb.37 and stated that the wages/benefits paid in these companies are much higher in relation to the workmen engaged by Party II. He also invited my attention to Exb. 56 colly which is Wage Progression Grade-wise from 2001 to 2011 of Party II and stated that there has been no substantial increase in the basic of the workmen as per these documents. He stated that if there is a rise in CPI the workmen are bound to get a rise and in support of his above submission he relied on the judgement in the case of **Transport Corporation of India Ltd., Bombay v/s Maharashtra Rajya Mathtadi Transport and General Kamgar Union 2002 III LLJ 835** the observations in which indicate that increase in CPI justifies an upward rise revision and it is for the employer to prove before the Tribunal that it would not be possible for it to bear the burden that would be cast on it if the demands are allowed. He statad that financial condition of Party II is very much sound and pointed to the balance sheet of the company at Exb. W/4 colly to substantiate his above statement. By referring to the judgement in the case of **Transport Corporation (supra)** he stated that the burden is on the employer to show that he has no financial capacity to withstand the burden on him as it is he who knows his financial position and that though Party II claims that it has given rise to its employees on the principle of region-cum-industry, no evidence is led by Party II on this subject. By referring to the judgement in the case of **Bharat Sanchar Nigam Ltd. v/s Industrial Tribunal and others 2008 III CLR 141** he stated that there is nothing in the industrial dispute act that a dispute to be a industrial dispute should be raised by a recognized union or a majority union and it would suffice if there is a controversy between the employer on one side and the workmen on the other side and what is essential is that on account of the controversy, there is

potential cause for disharmony, which is likely to adversely affect industrial peace and substantial number of workmen raises a dispute about it. As regards non mention of demands in the schedule to the reference Ld. Adv. for Party I relied on the judgment in the case of **Sheshrao Bhaduji Hatwar v/s Presiding Officer, First Labour Court & ors 1990 II CLR 726, Delhi Cloth and General Mills Company, Ltd. v/s Their workmen and other 1967 I LLJ 423** contending that the reference cannot be held as untenable only because the dispute is not reflected in the reference and that the entire pleadings of the parties are to be examined to find out the exact nature of the dispute.

25. On the other hand Ld. Adv. for Party II by referring to Sec. 10 (1) of the Act stated that reference of the dispute to the Tribunal is made by the Appropriate Government when it forms the opinion that the industrial dispute exist or is apprehended. He also stated that the Tribunal has to confined the adjudication strictly to the terms of reference in terms of section 10(4) of the Act. He then by referring to schedule 1 to the terms of reference stated that this schedule reads as "*whether the 25 points of the charter of demands served by the Gomantak Mazdoor Sangh on behalf of the workmen on the management of M/s Nestle India Ltd., Usgao, Goa, is genuine and justified?*" and submitted that the schedule does not speak about the date of demands or the nature of demands and hence the question of Appropriate Government forming an opinion that an Industrial Dispute exist or is apprehended, or for that matter the Tribunal confining the adjudication to the terms of reference, does not arise. By referring to the failure report at Exb. 94, Ld. Adv. for Party II stated that no deatils of the demands are found even in this document. Thus, according to him no actual dispute is referred for adjudication. To highlight as to what is an industrial dispute u/s 2(k) of the Act, he relied on the very same judgment in the case of workmen of **Damakuchi Tea Estate (supra)** by stating that the workmen raising the dispute must have nexus with the dispute, either because thay are personally interested or because they have taken up the cause of another person in the general interest of Labour Welfare. He also relied on the judgment in the case of **M/s Shalimar Works Ltd.v/s Their Workmen 1959 SC 1217, The management of Hindustan Lever Ltd., New Delhi v/s the Administrator, Delhi Administration 1977 Lab. IC 681, Pottery Mazdoor Panchayat v/s The Perfect Pottery Co. Ltd., AIR 1979 SC 1356, Mukund Ltd., v/s Mukund Staff and Officers Association 2004 (101) FLR 129 and in the case of M/s India Tourism Development Corporation New Delhi v/s Delhi Administration 1982 Lab. I.C. 1309** to canvas the proposition that the dispute raised has to be definite and clear and if the same is indefinite and vague it might disqualify itself as an industrial dispute. By referring to the above judgment he also submitted that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to the matters incidental thereto and the Tribunal cannot go beyond the terms of reference so also that the Tribunal cannot adjudicate the matters not within the purview of dispute referred. Thus, according to him in the absence of the mention of the demands in the schedule to the reference, the court cannot go into the genuiness of the demands.

26. As pointed out by the Ld. Advocate for Party II, there is no material in the claim statement and in the rejoinder on the subject of genuineness and justifiability of the demands, which are not mentioned in the terms of reference. Thus, such demands listed in the claim statement cannot be termed as genuine demands.

27. Apparently, there is revision of salary vide written settlement/understanding dated 20-1-01 (Exb. 55) w.e.f. 01-01-01 to 30-12-01. The charter of demand dated 14-10-01 is for revision of wages for the year 2002. Further, there has been revision of salary by the management by notice dated 22-12-01 (Exb. 66) w.e.f. 01-01-02. It is apparent from records that the workers have voluntarily accepted the increase in wages w.e.f. 01-01-02 and also thereafter till the year 2009. Thus above sequence of events, therefore is a pointer to fact that the dispute is not espoused by the workmen and this is because they have accepted the revision of salary as mentioned above.

28. In his cross examination Shri P. Gaonkar has admitted that in the schedule to the order of reference the date of the charter of demands served on Party II as well as which are the 25 points of the charter of demands is not mentioned. He has however denied the suggestions that the said schedule to the reference is vague and not capable of adjudication and therefore the question of deciding genuineness and justification of the said demands does not arise. Undoubtedly, for adjudication of a dispute, the same has to be definite and this is because courts cannot enlarge the scope of reference or travel beyond the points specifically referred for its adjudication. It is only

after the court comes to the conclusion that the dispute is definite, it would be possible for the court to look into the other aspects such as the paying capacity of the employer or if the wages are not in consonance with Consumer Price Index. Admittedly, the terms of reference do not contain the date of charter of demands comprising of 25 points or as to what are those 25 demands. It may be that in terms of failure report dated 18-9-02 (Exb. 94) the General Secretary of Sangh had submitted that the Sangh had raised an industrial dispute against Party II pertaining to charter of demands vide letter dated 14-10-01 and that the management adopted delaying tactics, but Exb. 94 makes it clear that none on behalf of the management attended the discussion before the conciliation officer. Even for that matter, no details of the so called 25 points of COD served on management are mentioned in Exb. 94. Things would be different if the details of so called 25 points of COD were found in Exb. 94 as in such case this court would come to the conclusion that the demands listed in the claim statement and the one mentioned in Exb. 94 were the same and thereby could hold that it were the same demands which were served by the union on the management. Thus, it was only in such situation, this court in the absence of details of the demands in the order of reference could say that exact nature of dispute is apparent from the pleadings of Party I. That apart, there is nothing in Exb. 94 to show that the 25 demands alleged to have been submitted on 14-10-01 by the union were forwarded by the Conciliation Officer to the Appropriate Government and consequently there was nothing before the Appropriate Government to satisfy itself as to the nature of the demands or their genuineness. This by itself makes the reference vague. Interestingly no steps have been taken by Party I to get the said mistake corrected or to get the reference amended.

29. Be that as it may, in the judgment in the case of **Bharat Sanchar Nigam (supra)** no doubt, it is observed that a dispute raised by a recognized union or a majority union would be an industrial dispute but the observations in this judgment also indicate that there has to be a controversy between the employer on one side and the workmen on the other side. I have already discussed while answering issue No. 1 that there is nothing on record to indicate that the dispute is raised on behalf of the workmen and therefore the controversy here cannot be said to be between the employer on one side and the workmen on other side. Even otherwise, in the absence of details of demands in the order of reference or in the failure report, it is rather hard to conclude that there is any controversy between the employer on one side and the workmen on the other side or for that matter if at all there is any controversy what is it or on which exact subject matter, the same is. Thus, in this peculiar situation, the ratio in the above judgement cannot be made applicable to the instant case.

30. As regards the judgment in the case of **Sheshrao (supra)** it is observed that the order of reference should be liberally construed and a reference should not be rendered incompetent merely because it is made in general terms and that it is always permissible for the labour courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The reference in this case was through relating to termination of services of an employee and his claim for reinstatement, back wages and continuity of service, it was not properly worded, in as much as, it was contended by the employer that there was abundant material to conclude that the workmen had voluntarily abandoned the service. Labour Court upheld the contention of the employer and came to the conclusion that the reference was vitiated due to non application of mind by Deputy Commissioner. It was in the situation pointed out above the observations in this judgement were made by the Hon'ble High Court. Undoubtedly, the fact situation in the instant case is totally different from the facts in the above judgment as in the instant case it is the contention of Party I union that the COD served on the management were not accepted by the management and therefore in such situation it was very much essential that the order of reference contained the details of those demands, more particularly to enable the court to know that these were the very same demands which Party I claimed to have served on the management. Thus, in the situation pointed out above, it cannot be said that the order of reference in the instant case is made in general terms and hence is not incompetent. Being so, the ratio in the above judgement is not applicable to the instant case.

31. Coming to the judgement in the case of Delhi Cloth and General Mills (supra) the observations in this judgement otherwise favour the stand taken by Party II as it is held that the tribunal is not free to enlarge the scope of the dispute referred to it but it must confine its attention to the points specifically mentioned and

anything which is incidental thereto. As pointed out by me supra, the dispute referred in the instant case is a vague dispute and therefore in such situation the question of this court confining its attention to the points specifically mentioned in the dispute, does not arise. Thus, this judgment cannot be of any help to advance the case of Party I.

32. In the judgment in the case of **M/s. Shalimar Works (supra)** there was wholesale discharge of workmen in breach of Sec. 33 of the Act; that the matter was referred after three years and in the reference no names of the discharged workers were given and in such situation it was observed that the reference was vague as the names of the workmen to be reinstated were not sent to the industrial tribunal. Like in the above case the demands are not specified in the reference and therefore the reference in this case too is vague.

33. Coming to the judgment in the case of the **Management of Hindustan Lever (Supra)** though the facts in this case are different from the facts in the instant case, the ratio that emerges from this judgment is that there has to be direct nexus between the workmen and the dispute they would raise and that no abstract dispute could be raised. It is thus held in this judgment that if the dispute is indefinite and vague it might disqualify itself as an industrial dispute. In the instant case as the dispute is vague, it is not understood as to what is the nexus between such vague, dispute and the workmen. This being the case, as observed in this judgment this by itself disqualifies the dispute herein, as an industrial dispute.

34. Even in the judgment in the case of **Pottery Mazdoor (supra)** it is observed that the tribunal cannot go beyond the terms of reference and being so it is not open for this court to look into the demands enlisted in the claim statement to say that they form the part of the terms of reference and doing so would amount to enlarging the scope of the reference. Similar is the case in the judgment in the case of Mukund Ltd.,(supra) in which it is held that the tribunal being a creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference. Thus, it is clear that it is not permissible for this court to import the demands enlisted in the claim statement of Party I herein as forming the terms of reference.

35. In the judgment in the case of **M/s India Tourism Development (supra)** it is observed that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of reference. In the instant case since the demands to be adjudicated are not specified in the terms of reference it is beyond the reach of this Tribunal to consider the matter incidental thereto and what follows from the above observations is that points to be adjudicated have to be specifically referred for adjudication.

36. Reference also deserves to be made to the judgment in the case of **Tata Iron & Steel Co. Ltd. v/s State of Jharkhand and Ors. 2013 LLR 1157,** the observations in which indicate that there cannot be proper adjudication in the absence of clear terms of reference. The judgments in the case of **M/s. India Tourism Development Corporation and Sindhu Re-settlement (both cited supra)** have been considered in this case while coming to the conclusion, as above. I would also refer to the judgment in the case of **Suresh Chandra v/s General Manager, Rajasthan State Bridge and Constructions Corporation 2002 (94) FLR 843,** in which it is observed that Labour Court lacks competent to correct/modify/amend/alter the terms of reference and if it does so the award becomes nullity being without jurisdiction. Reference is also made to the judgment in the case of **Hanjar Cinema v/s General Mazdoor Sangh and Ors. 2013 III CLR 153,** in which it is held that the terms of reference u/s. 10(1) of the Act, cannot be bye-passed or expanded by the Industrial Tribunal or Labour Court, which has to attend the dispute, referred to it, within the terms and wording of the reference only.

37. Discussion above therefore makes it clear that in the absence of mention of specific demands in the terms of reference the question of Party I union proving that the said demands are genuine and justified on the basis of the paying capacity of the employer, does not arise and on the contrary it is clear that the dispute referred, cannot be construed as an industrial dispute and the order of reference being vague and incomplete, is incapable of adjudication. Hence my findings.

38. *Issue Nos. 3 & 5:* Both these issues are answered together for the sake of convenience being interconnected.

39. Shri P. Gaonkar has stated that the company was informed of the formation of the union vide their letter dated 25-9-00 and the union also submitted the COD on their behalf. The said COD dated 25-9-00 is brought on record in the cross examination of Shri P. Gaonkar at Exb. 25. Shri P. Gaonkar has also stated that despite several requests the management refused to negotiate with the union and as such the union raised dispute before the Asstt. Labour Commissioner, Ponda. He has stated that during the proceedings the attitude of management was adamant but to avoid confrontation, the union signed the minutes of conciliation on 20-1-01. Shri P. Gaonkar has produced on record the said minutes of conciliation at Exb. W/12. Even Shri Vivek Kumar the witness of Party II has produced the said minutes at Exb. 55. Shri P. Gaonkar has denied the suggestion that the COD at Exb. 25 culminated in minutes at Exb. 55. Though in his cross--examination Shri. P. Gaonkar has stated that no settlement has been arrived at on the COD at Exb. 25, but he has admitted that the minutes at Exb. W/12 were with reference to the COD submitted in the year 2000. Nevertheless, in his arguments Ld. Adv. for the Party I stated that Exb. W/12/Exb. 55 is not a settlement as in terms of Section 2(p) of the Act the settlement has to be signed by the parties thereto in such manner as may be prescribed and a copy there of has to be sent to the Appropriate Government and the Conciliation Officer. By inviting my attention to Exb. W 12/Exb. 55 he stated that it is not in the format prescribed i.e. FORM H and that it also does not refer to the COD raised by the union and therefore it is just a presentation and hence not required to be terminated as required under sec. 19(2) of the Act. In support of his submissions, he relied on the judgment in the case of **APSRTC National Mazdoor Union v/s APSRTC and Anr. 2008 CLR 431, Parke-Davis (India) Ltd. v/s Mahadev Bhiku Jadhav and Anr. 2008 II CLR 638 and in the case of Gajanan Gangaram Patil (Shree) v/s Relene Petrolchemicals Ltd., 2012 III CLR 829.**

40. On the other hand Ld. Adv. for Party II urged that Exb. W 12/Exb. 55 is a settlement pertaining to COD dated 25-9-2000 and therefore the same was required to be terminated in terms of Section 19(2)/19(7) of the Act before raising the further COD. In support of his statement that Exb. W12/ /Exb. 55 is a settlement Ld. Adv. for Party II relied on the judgment in the case of **Raghvendra Mathur v/s Allahabad Bank 1991(1) LLJ 273** and in the case of **Punjab Kesri Printing Press v/s Ratan Singh and Ors. 1991 II CLR 123.**

41. Be that as it may, reading of the claim statement (Para 13) makes it appear that the minutes of conciliation at Exb.W12/Exb. 55 was infact a written settlement entered into after the COD at Exb. 25 was raised. Even Shri P. Gaonkar has in his cross examination has stated that the demands submitted in the year 2000 were settled by signing minutes and the said settlement was for a period of one year. It is equally correct that Exb. W12/Exb. 55 is not in the prescribed format but it is clear from the observations in the judgment in the case of **Raghvendra Mathur (supra)** that even if the settlement is not in accordance with the prescribed form as contemplated under rule 58 of the Industrial Disputes (Central) Rules, 1957 it does not suffer from any defects. Also in the judgment in the case of **Punjab Kesri Printing Press (supra)** it is observed that a settlement under section 2(p) need not necessarily be written or jotted down on FORM H prescribed under rule 58 and it is sufficient that it contains all the ingredients required by FORM H. Thus merely because Exb. W12/Exb. 55 is not in the required format, it cannot be said that it is not a settlement.

42. In the judgment in the case of **APSRTC (supra)** an agreement dated 1-7-05 was entered into before the Transport Minister which agreement was sought to be called as settlement by the petitioner, however it is observed that to constitute a settlement the written agreement must be signed by the Employer and the workman and that the Petitioner did not plead that they and Respondent No.1 signed on the agreement. Contrary to this, perusal of Exb.W12/Exb. 55 reveals that the same is signed by the Employer as well as the representatives of the workman before the conciliation officer and therefore the observations in the above judgment are not applicable to the case in hand.

43. In the judgment in the case of **Park-Davis (supra)** the settlement was signed in conciliation on 16-11-90 and it was made applicable to all permanent workmen including probationers and it was to remain in force upto 31-3-93. However there was a meeting between company and the union on 6-5-91 which resulted in minutes being recorded with respect to confirmation of temporary and badli workmen in service and the arrangement as above was to remain in force upto 31-3-93. It was contended by the Petitioners that the workmen were bound by these arrangements and as such it was held that the said minutes dated 6-5-91 are not a

settlement as defined u/s 2(p) of the Act and cannot be binding on the workman. It is therefore clear from above facts that the observations in this judgment were made in a totally different context in relation to the minutes and they in no way could be imported to say that Exb. W12/ /Exb. 55 is not a settlement.

44. In the judgment in the case of **Gajanan Gangaram Patil (supra)** it is dated that letters from employer or minutes of discussion, on arriving at certain conclusions in the meeting, held between employer/management and the workers/union of workers, would not take place of arrangement/settlement, as contemplated u/s 2(p) of the I.D. Act. I have already mentioned above the nature of Exb. W12/Exb. 55 which in no way could be said to be a letter or minutes of discussion and therefore the observations above cannot be applied to the instant case.

45. Having come to the conclusion that Exb.W12/Exb. 55 is a settlement, it is now required to see if the same is terminated as required u/s 19(2)/19(7) of the Act. It may be mentioned here that in para 13 of the claim statement Party I has pleaded that the Sangh in the month of October, 2001 sent notice of termination of written settlement/understanding as the same was for a period of one year and submitted the fresh COD dated 14-10-01. In reply to this para vide reply at para 13 of the written statement Party II amongst other things has pleaded that union has no power to terminate any written settlement or understanding and the COD dated 14-10-01 is not maintainable and is bad in law. It is clear from the nature of above pleadings that Party II has not denied in particular the act of Party I giving notice of termination but has challenged the powers of Party II to terminate. Thus, what Party I is required to establish is that it had powers to terminate i.e. it could legally terminate this settlement.

46. In his arguments Ld. Adv. for Party I relied on the judgment in the case of **Workmen of Western India Match Co.v/s Western India Match Co. 1962 1 LLJ 661 (SC)** in which it has observed that various representations made on behalf of the workmen and the presentation of the COD were sufficient to terminate the COD and that formal notice u/s 19(2) of the Act terminating the settlements was not required. He also relied on the judgment in the case of **M/s. Shukla Manseta Industries Pvt. Ltd. v/s The Workmen 1977 LAB I.C.1541,** in which it is held that advance notice can be given to terminate a settlement or an award provided the requisite period of two months required u/s 19(2) expires on the date of expiry of the settlement or award or thereafter. He then relied on the judgment in the case of **Cochin State Power, Light Corporation Ltd. v/s its Workmen 1964 II LLJ 100** in which after expiry of period of settlement by afflux of time, the union, submitted a COD stating that they had resolved to terminate the settlement and submit the present demands. It is held that there was specific statement made therein that the settlement was being terminated and hence it was sufficient notice as required u/s 19(2) of the Act. He further relied on the judgment in the case of **M/s. Bharat Textile Works v/s Workmen 1994 Lab. I.C. 2045** in which it is held that there is no formal or prescribed mode of termination and if there is any correspondence from which termination can be culled out with reference to particular date, that can be treated as a notice terminating the settlement. He then relied on the judgment in the case of **Fomento Resorts and Hotels Ltd. v/s Workmen 2012 III CLR 446** in which it is observed that if the notice culls out the clear intention of termination of the agreement the same could be construed as termination u/s 19(2) of the Act.

47. On the other hand Ld. Adv. for Party II by relying on the judgment in the case of Employees of **Thungabhadra Industries Ltd. v/s The Workmen and another (1974) 3 SCC 167** contended that the termination of the previous settlement has to be fixed with reference to a particular date as the certainty regarding the date is essential to calculate the period of two months.

48. To resolve the above controversy, it is essential to refer to section 19(2) and 19(7) of the Act, which reads as under:

Section 19(2):

"Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months (from the date of which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

Section 19(7):

"No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be."

49. In the case at hand the settlement at Exb.W-12/Exb. 55 was for a period of one year whereas the so called notice of termination is dated 14-10-01 (Exb. W-3 colly). The period of two months in terms of notice dated 14-10-01 would expire on or about 14-12-01 which is much prior to the date of expiry of Exb. W-12/Exb. 55, which would be 31-12-01 as per Exb. W-3 colly. In terms of the judgment in the case of **M/s. Shukla Manseta (supra)** an advance intimation about the intention to terminate the settlement could be given provided the requisite period of two months required u/s 19(2) expires on the date of expiry of the settlement or award or thereafter. I have already pointed out supra that the requisite period of two months required u/s 19(2) in term of Exb. W-3 colly expired on 14-12-01 which is much prior to the date of expiry of settlement at Exb. W-12/Exb. 55. Thus, the observations in this judgment are not applicable to the case tried to set up by Party I.

50. Coming to the judgment in the case of **Workmen of Western India (supra),** it is apparent from this judgment that a part of the dispute relating to dearness allowance was referred for adjudication and the conciliation proceedings regarding other disputes was resumed after the aforesaid reference was made and that only the issue relating to grades and pay scales could not be settled and as such it was agreed that the same be referred for adjudication to the same tribunal which was dealing with the question of dearness allowance. It was in this situation and upon raising the objection that there was no valid termination u/s 19(2) of the Act held that a formal notice u/s 19(2) of the Act was immaterial. It is therefore clear that the facts in the above case are totally different from the facts in the instant case and hence the ratio in it cannot be applied to the instant case.

51. As regards the judgment in the case of **M/s. Bharat Textile (supra)** though it is observed herein that no formal or prescribed mode of termination could be insisted upon and if there is any correspondence from which termination can be culled out with reference to a particular date, the same could be treated as a notice terminating the settlement, it is seen that in the instant case there is nothing specific in Exb.W3 colly stating that Party I intended to terminate the settlement from a particular date though a mention has been made therein that the existing understanding was expiring on 31-12-01. In the case of **Fomento Resorts (supra)** the subsisting settlement dated 3-2-05 was to expire on 31-1-08 and hence the notice dated 1-11-07 was given stating that said settlement shall stand terminated on and from 31-1-08 and afresh charter of demand shall be presented. The Hon'ble High Court in this situation held that the above notice itself states that the settlement would stand terminated on 31-1-08 i.e. the date of expiry of the settlement and thus rejected the contention of the petitioners that no appropriate notice under section 19(2) of the Act was served on them to terminate the settlement.

52. Thus, the factors which are very much apparent from the observations in the above mentioned judgments are that the requisite period of two months envisaged in Sec. 19(2) of the Act should expire either on the date of expiry of the settlement or award or thereafter and that there has to be clear intention to terminate the settlement from a particular date in the notice/ /letter and which is so stated in the judgment in the case of **Employees of Thungabhadra Industries (supra),** relied upon by the Ld. Advocate for Party II.

53. I have already pointed out above that the requisite period of two months as required u/s 19(2) of the Act in this case expires on 14-12-01 whereas Exb. W-12/Exb. 55, as stated in Exb. W-3 colly expires on 31-12-01. Legally the settlement would continue to be binding on the parties even after its expiry of the period mentioned in Sec. 19(2) until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given and therefore even if the other party admits that the settlement has been terminated, the same if not terminated as required by Sec. 19(2) of the Act, it cannot be considered as termination in the eyes of law and in such situation the settlement would continue. This is because admissions by parties cannot byepass the law. Thus, the demands now raised would be barred in view of the mutual agreement between the parties since notice under section 19(2) or 19(6) if expires within the period of award or settlement, it is invalid under the law. It is therefore necessary to find out if the alleged termination of the settlement vide letter dated 14-10-01 at Exb. W-3 colly is termination in the eyes of law.

54. Be that as it may, in the letter dated 14-10-01 what has been mentioned about the written settlement/understanding is that "*the existing understanding regarding the wage revision and improvement in other service, is expiring on 31-12-01, and in order to arrive at an amicable understanding we are enclosing herewith the demands of the workers for your acceptance.*" It is therefore clear from the above wordings that there is no specific mention in it stating that Party I union 'was terminating' or was 'intending to terminate' the existing settlement on 31-12-01 and this was required because even otherwise the settlement at Exb. W-12/Exb. 55 was for a period of one year. It was therefore required of Party I to have expressed its clear intention to terminate the settlement from a particular date in terms of the observations in the judgment in the case of **Thungabhadra (supra).** This being the situation, the COD is not maintainable as there is already subsisting settlement and as there is no compliance of Sec. 19(2) of the Act, the question of negotiating on demands does not arise.

55. As regards section 19(7) of the Act, there is nothing on record indicating that the union was authorized by the majority of the workmen by a resolution to terminate the settlement as required by this section.

56. Thus, it is clear from the above discussion that Party I has failed to prove that the action of Party II in not settling the demands is illegal and unjustified and on the contrary Party II has sufficiently established that the reference is not maintainable because the demands are barred in view of mutual agreement between the parties. Hence my findings.

57. *Issue No. 7:* In view of the findings on all the above issues, the question of granting any reliefs to the workmen does not arise. Hence my findings.

58. In the result and in view of discussion supra, I pass the following:

ORDER

1. It is hereby held that the 25 points of charter of demands served by Gomantak Mazdoor Sangh on behalf of the workmen on the management of M/s. Nestle India Ltd., Usgao, Goa, are not genuine and justified.
2. It is hereby further held that the action of the management of M/s. Nestle India Ltd, Usgao, Goa, in not settling the above demands is legal and justified.
3. Party I/union is therefore not entitled to any relief.
4. No order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly)
Presiding Officer
Industrial Tribunal-
-cum-Labour Court.

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Notification

No. 28/1/2013-Lab/739

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 24-09-2013 in reference No. IT/4/10 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 4th November, 2013.

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IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/4/2010

Shri Francis D'Costa,
H. No. 428/1, Godar Macazana, … Workman/Party I
Salcete-Goa

V/s

M/s. Costa and Company Pvt. Ltd.,
Aquem Alto,
Margao, Salcete-Goa Employer/Party II

Party I/Workman present at the time of filing of the pleadings but absent, not represented at the time of evidence and arguments.

Adv. Shri G. B. Kamat present for Employer/Party II, present at the time of filing of the pleadings, evidence and arguments.

AWARD

(Passed on 24th day of September, 2013)

By order dated 10-05-2010, bearing No. 28/12/ /2010-LAB, the Government of Goa in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short the Act), has referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s. Costa & Company Pvt. Ltd., Margao, Goa, in terminating the services of its workman, Shri Francis D' Costa, semi--skilled, with effect from 8th July, 2007, is legal and justified?

(2) If not, what relief the workman is entitled to?"

(2) Upon receipt of the reference, it was registered as IT/4/10 and registered AD notices were issued to both the parties. Pursuant to service of notices, Party I filed the claim statement at Exb. 6 and Party II filed the written statement at Exb. 7. Party I then filed the rejoinder at Exb. 9.

3. In the claim statement, it is in short the case of Party I that he was employed as a semi skilled worker by Party II who is doing the business of manufacturers, wholesalers and exporters of quality food. It is stated that he has been working as a workman for Party II for last seventeen years. It is stated that in July, 2007 the Production Manager of Party II informed him that the employer had directed him not to allow him for duties and direct him to leave the work forever where upon he contacted the General Manager but he too expressed inability to allow him for duties. It is stated that the Party I thereafter regularly attended the work place for about a month but was not allowed to perform the work and as such he sat outside the gate of the Company. It is stated that the acts of Party II of not allowing him to attend the work amounts to illegal termination of the service and or dismissal from the service without due process of law. It is stated that the Party I is presently unemployed. It is stated that Adv. Shri R. Shirodkar appointed by Taluka Legal Services, Margao, on his behalf, issued legal notice dated 22-2-08 to Party II to settle his dues to which he was entitled due to illegal termination of his services but Party II neither settled the dues nor responded to the legal notice and as such Party I filed complaint dated 28-3-08, to the Dy. Labour Commissioner who called the parties for joint discussion but the management did not attend and sent written submission dated 22-7-08 and denied the contentions made by Party I in his complaint dated 28-3-08. That Party I filed reply dated 14-8-08 and claimed lumpsum amount of Rs. 3,00,000/- from Party II for wrongful dismissal from services and towards entire benefits concerning his work with the employer for last seventeen years. It is stated that though the matter was admitted in conciliation, as no representative of Party II was present, the proceeding ended ex-parte. Hence the reference praying to direct Party II to pay to Party I the monthly wages from July, 2007 till this date of October, 2010 or till adjudication of this dispute between Party I and Party II and to direct Party II to pay to Party I the gratuity, provident fund, pensionary benefits etc., accrued to Party I due to his more than 17 years services with Party II.

4. In the written statement Party II has denied the case setup by Party I and has stated that the reference has been drawn up without application of mind as at all the time it is/was the case of Party II that the services of Party I were not terminated but that the Party I did not report for duties and subsequently collected all his legal dues without any protest and the allegation about illegal termination of his service was purely by way of afterthought. It is stated that admittedly no dispute about termination of his services, illegal or otherwise, was raised by Party I at any point of time and even in the notice dated 22-2-08 addressed by Adv. Shri R. Shirodkar, Party I complained about non-settlement of legal dues due to him and the Company for the first time was called upon to settle the said dues within 10 days of the receipt of the said notice. It is stated that upon receipt of the said letter, the Company forwarded a cheque for Rs. 49,868/- drawn on Bank of India, Margao branch towards gratuity due to Party I along with their covering letter dated 25-03-08 which was duly received by Party I and the cheque was also encashed by Party I on 28-3-08. It is stated that the Party I was also requested to submit Form 19, Form 10-C duly filled in and signed by him for claiming his provident fund dues and pension fund dues from the Provident Fund Office at Panaji, Goa. It is stated that Party I also collected bonus of Rs. 3,750/- due to him from the office of company on 18-12-07 without protest or without complaining about alleged illegal termination of his services in any manner. It is stated that in view of notice dated 22-02-08, it is evident that Party I was only interested in settlement of his legal dues and he was not at all interested in the employment with the company and therefore the dispute regarding alleged illegal termination of services

could not have been referred for adjudication. It is stated that in view of settlement of all the dues of Party I by Party II and acceptance thereof by Party I, relationship of employee-employer came to an end and thus the dispute regarding alleged termination of services could not have been referred for adjudication. It is stated that at no point of time the services of Party I were terminated and on the contrary Party I started remaining absent w.e.f. 08-07-2007 without intimation or prior permission from the company. It is stated that thereafter Party I attended the office on 16-7-07 and informed the Production Manager that he was sick where upon Party I was asked to get examined by Dr. M. Soares and produce medical certificate however on making enquiry with said Dr. Soares on the next day, it was revealed that Party I did not approach the said doctor at all either on the said date or at any time thereafter and that Party I also did not report for duties at any time thereafter and subsequently collected all his legal dues without any protest. It is stated that in such circumstances, question of termination of services of Party I by the company did not arise at all and therefore also the Party I is not entitled to any reliefs as prayed for or to any other relief.

5. In the rejoinder Party I denied the contentions made by Party II in the written statement.

6. On the basis of averments of the respective parties, following issues dated 1-03-2011 (Exb. 10), were framed:

1. Whether the Party I proves that the Party II had terminated his services illegally w.e.f. 8-7-2007?
2. Whether the Party II proves that the Party I failed to report to work w.e.f. 8-7-2007?
3. Whether the Party II proves that the reference is not maintainable for reasons set out in para 2 of the written statement?
4. What relief? What order?

7. In the course of proceedings the matter was fixed for evidence and Party I placed on record his affidavit-in-evidence at Exb. 12. It may be mentioned here that Party I did not tender Exb.12 before the court, on oath and as such the matter was fixed for examination in chief as well as the cross examination of Party I. Records reveal that Party I thereafter stopped appearing before the court and also he was also not represented before the court. Thus, after giving several opportunities to Party I, his evidence was closed vide order in the roznama dated 16-7-13 and the matter was fixed for the evidence of Party II. Ld. Advocate for Party II on the date when the matter was fixed for evidence of Party II stated that Party II does not wish to lead evidence.

8. Arguments of Ld. Advocate for Party II were heard.

9. I have gone through the records of the case and have duly considered the submissions made by Ld. Advocate for Party II. Though Party I has filed the claim statement and has also placed on record his affidavit in evidence, as he has not remained present before the court for tendering his affidavit in evidence, on oath and consequently not made himself available for cross examination, no weightage could be given to his affidavit in evidence, placed on record vide Exb.12 as the same cannot be considered as legal evidence. Even for that matter, as Party II has also not lead evidence, there is no material before the court to answer the issues framed vide Exb.10. As such, this court is not in a position to adjudicate the dispute referred to it by the appropriate Government.

10. Reliance is placed on the judgment in the case of **Baldev Singh v/s the Judge, Central Government Industrial Tribunal & Labour Court & Ors 2007 II CLR 685** in which by referring to the judgment in the case of **Virendra Bhandri v/s Rajasthan State Road Corporation Ltd., & ors (2002) 9 SCC** it is observed as under:

> *"….. a reference of certain Industrial Dispute was made to the Industrial Tribunal-cum--Labour Court. The workman did not appear before the Tribunal, therefore, Tribunal held that there remains no Industrial Dispute. However, subsequently, the Appropriate Government again referred the dispute to the Tribunal on the same question and on this occasion, the Tribunal adjudicated the matter and made an award. The High Court held that the finding recorded by the Tribunal in the first reference amounted to an "award" and, therefore, second reference was incompetent. The Honourable Apex Court held that all that was stated was that the parties concerned had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it, not that the dispute itself does not exist. When there is no adjudication of the matter on merits it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government, such a matter can be referred under Section 10 of the I. D. Act, as Industrial Disputes are preferred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely*

for adjudication of the dispute between two private parties. Therefore, it was permissible for the Government to have made the second reference ....."

11. Since in the instant case, the dispute raised by the Party I before the conciliation officer has not been proved by Party I before the court by adducing evidence, there is no adjudication of the dispute this court and as such this court is unable to record any finding on the reference forwarded to it.

12. In the circumstances, I pass the following:

ORDER

1. It is hereby held that this court is unable to record the finding on the issue referred by the Appropriate Government.
2. No order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I

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Department of Official Language and Public Grievances

Directorate of Official Language

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Order

No. 12/22/2013/DOL/Periodical-Scheme/838

Directorate of Official Language, Government of Goa hereby constitutes Expert Appraisal Committee as required under the scheme, "Financial Assistance to the Goan Publishers for publication of periodicals/magazines" consisting of eminent personalities in the concerned field for the purpose of selection as below:

1. Director of Official Language	—	Chairman.
2. Shri Kishor Naik, President, Goa Union of Journalist	—	Member.
3. Shri Hiru Naik, Rutu Prakashan, Volvoi, Savoi Verem, Ponda-Goa	—	Member.
4. Shri Sanjay Dhavalikar, Editor, Dainik Herald	—	Member.
5. Shri Prabhakar Bhide, Rajhans Prakashan, Panaji-Goa	—	Member.
6. Assistant Director (Marathi)	—	Member Secretary.

The terms of reference of this Committee shall be as under:

(i) This committee shall meet as and when required to examine the proposals and recommend the same on case to case basis.

(ii) In exceptional cases, the committee is authorized to relax the eligibility conditions mentioned at Clause VI of the notified scheme, indicating the reasons thereof in writing.

(iii) The tenure of the committee shall be for the period of three years.

(iv) The non-official members of the committee shall be entitled for seating honorarium as per the rates made applicable by Government from time to time.

By order and in the name of the Governor of Goa.

Dr. *Prakash Vazrikar,* Director & ex officio Joint Secretary (Official Language).

Panaji, 21st July, 2014.

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Department of Panchayati Raj and Community Development

Directorate of Panchayats

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Notification

No. 19/35/DP/BYE-ELECTION/14/4005

In pursuance of sub-section (8) of Section 7 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), read with Rule 58 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, it is hereby notified for the information of the public that the persons specified in column No. 3 of the Schedule appended hereto have been duly elected as member of the Panchayat mentioned in the corresponding entry in column No. 2 from the ward shown against the name in column No. 4 of the said schedule in the bye-election held on 13-7-2014.

SCHEDULE

Sr. No.	Name of the Village Panchayat/Block	Name and address of the the elected member	Ward No. Reservation
1	2	3	4
1.	V. P. Salvador-do-Mundo, Bardez-Goa	Shri Hemant Lavu Borkar, H. No. 453, Chodan Wado, Salvador-do-Mundo, Bardez-Goa	VI
2.	V. P. Agonda, Canacona-Goa	Shri Barsat Narendra Naik Gaunkar, H. No. 626, Karashirmol, Agonda, Canacona-Goa	VI
3.	V. P. Bandora, Ponda-Goa	Shri Sukhanand Raghoba Gaude, H. No. 94/A, Kurpas, Nageshi, Bandora, Ponda-Goa	I
4.	V. P. Usgao-Ganjem, Ponda-Goa	Smt. Sunanda Dyaneshwar Naik, H. No. 431, Tiral, Usgao-Goa	III (Reserved for Women)
5.	V. P. Se-Old-Goa, Tiswadi-Goa	Shri Siddesh Shripad Naik, H. No. 111, "Vijayshree" St. Pedro, Old-Goa, Tiswadi	I (Reserved for OBC)

By order and in the name of the Governor of Goa.

Narayan S. Navti, Director & ex officio Jt. Secretary (Panchayats).

Panaji, 25th July, 2014.

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Notification

No. 19/DP/V.P. Harvalem/14/4024

In pursuance of sub-section (8) of Section 7 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), read with sub-rule 58 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, it is hereby notified for the information of the public that the persons specified in column No. 3 of the Schedule appended hereto have been duly elected as members of the Panchayats mentioned in the corresponding entry in column No. 2 from the wards shown against their names in column No. 4 of the said Schedule in the elections held on 13-7-2014.

SCHEDULE

Sr. No.	Name of the Village Panchayat	Name and address of the the elected member	Ward No.
1	2	3	4
1.	Bicholim Harvalem	Shri Sagar Sagun Malik, R/o H. No. 473, Varchawada, Harvalem, Sakhali-Goa	I
		Smt. Sharada Sharad Malik, R/o H. No. 926, Varchawada, Harvalem, Sakhali-Goa	II Reserved for women
		Shri Mahesh Tulshidas Divkar, R/o H. No. 1200, Shivkrupa Colony, Harvalem, Sakhali-Goa	III
		Shri Guruprasad Ganpat, Naik, R/o H. No. 968, Pratap Nagar, Harvalem, Sakhali-Goa	IV Reserved for OBC

1	2	3	4
		Smt. Priya Pramod Thakur R/o H. No. 1607, Pausawada Varche, Harvalem, Sakhali-Goa	V Reserved for women

By order and in the name of the Governor of Goa.

Narayan S. Navti, Director & ex officio Jt. Secretary (Panchayats).

Panaji, 25th July, 2014.

Department of Personnel

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Order

File No. 6/16/2014-PER/4283

The ad hoc appointment of the following Officers in Junior Scale of Goa Civil Service, is extended further for the period indicated against their names or till the appointment is made on regular basis, whichever is earlier:

Sr. No.	Name of the officer	Ad hoc appointment extended upto
1.	Smt. Neetal P. Amonkar	05-07-2014 to 04-07-2015.
2.	Shri Yeshwant D. Kamat Khadye	-do-
3.	Smt. Olga Menezes	-do-
4.	Shri Gaurish Shankwalkar	-do-
5.	Shri Mahadev Araundekar	-do-
6.	Shri Harish N. Adconkar	-do-
7.	Smt. Sarita Sadashiv Marathe	-do-

This is issued with the approval of GPSC conveyed vide their letter No. COM/II/11/42(5)/ /2012/697 dated 22-07-2014.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 23rd July, 2014.

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Order

File No. 7/30/2014-PER

Read: Notification No. 7/30/2014-PER dated 04-06-2014.

In partial modification of the Government Notification read in preamble, the Governor of Goa is pleased to order the allocation of following work/Departments to Shri Prashant Goyal, IAS (AGMU:93), Secretary to Government, with immediate effect, until further order:

1. Labour & Employment.
2. Legal Metrology.
3. Protocol.

By order and in the name of the Governor of Goa.

R. Aga, Under Secretary (Personnel-I).

Porvorim, 11th July, 2014.

Department of Planning

Directorate of Planning, Statistics & Evaluation

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Order

No. 4-2-14/PLG/DPSE(Part file)/5123

On recommendation of the Goa Public Service Commission vide their letter No. COM/II/11/38(1)/ /2013/615 dated 23-06-2014, the Government is pleased to promote Shri J. N. Shirodkar, Statistical Officer of Common Statistical Cadre as Dy. Director, Group 'A', Gazetted in the pay scale of PB—III ` 15,600-39,100 + 5,400/- on regular basis with immediate effect, against the vacancy of Shri Gurudas J. Gaundalkar, retired on superannuation and is posted in the Div. IV (Co-ordination), Directorate of Planning, Statistical & Evaluation, Panaji.

Shri Shirodkar will be on probation for a period of two years from his date of joining.

By order and in the name of the Governor of Goa.

Anand Sherkhane, IES Director & ex officio Addl. Secretary (Planning).

Panaji, 25th July, 2014.

Department of Public Grievances

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Order

No. DPG/Committee/2014/1191

The Government of Goa is hereby pleased to constitute a three member committee, namely, "Committee on Simplification of Procedures for Effective Delivery of Public Services" under the Chairmanship of Shri N. D. Agarwal, a retired Goa Civil Service Officer, for the purpose of examining all public services coming within the purview of the Goa (Right to Citizens to Time-bound Delivery of Public Services) Act, 2013 (Goa Act 19 of 2013) and rules framed thereunder and to recommend suitable measures for simplification of the procedure for delivery of public services in the State of Goa, with immediate effect.

The Committee shall:

(i) examine the existing procedures followed by various authorities for delivery of public services in the State of Goa and suggest/ /recommend suitable measures to simplify the procedure by cutting down the number of points in the public service delivery system and dispense with unnecessary/ /irrelevant documentation. The Committee shall also suggest/recommend alternate documents for receiving public services;

(ii) submit it's monthly report to the Government in respect of the selected services.

The other two members of the Committee shall be appointed by the Government in consultation with the Chairman and the term of the Committee shall be one year commencing from the date of issue of this Order.

The terms and conditions of appointment of the Chairman and other members of the Committee, including remuneration, shall be determined as per the rules in force.

By order and in the name of the Governor of Goa.

P. Mathew Samuel, Secretary (Public Grievances).

Porvorim, 11th July, 2014.

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Department of Public Health

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Order

No. 44/19/2008-I/PHD

Government is pleased to accept the technical resignation dated 25-06-2014 tendered by Dr. Krupa Vaman Jog, Jr. Pathologist under Directorate of Health Services w.e.f. 25-06-2014 (a.n.) in order to enable her to join the post of Sr. Pathologist in Directorate of Health Services w.e.f. 26-06-2014. (f.n.).

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).

Porvorim, 24th July, 2014.

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Department of Revenue

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Order

No. 3/5/2014-RD

In view of proposal of the Administrator of Devasthans, Bicholim Taluka and order dated 23-05-2014 passed by Hon'ble Administrative Tribunal Goa, Panaji-Goa, in Devasthan Petition No. 7/2013, the Government hereby appoints Ad hoc Managing Committee under Article 45 of the Devasthan Regulation, to look after the work of Shree Devi Sharvani Vetal Panchayatan Saunsthan, Salgaonwada, Advalpal Bicholim, for a period of six months.

The Ad hoc Managing Committee of above--mentioned Devasthan shall comprise of Effective Committee and Substitute Committee, as under:

Effective Managing Committee:

Sr. No.	Name	Post
1	2	3
1.	Shivanand Vassudev Shenai Salgaoncar	President.
2.	Ganpat Purshottam Naik Salgaoncar	Secretary.
3.	Chandrakant Rama Petkar Salgaoncar	Treasurer.
4.	Ramchandra Shrikrishna Prabhu Salgaoncar	Attorney.

Substitute Managing Committee:

Sr. No.	Name	Post
1	2	3
1.	Rajesh Narayan Prabhu Salgaoncar	President.
2.	Dnyaneshwar Govind Petkar Salgaoncar	Secretary.

1	2	3
3.	Prabhakar Dattaram Shenai Salgaoncar	Treasurer.
4.	Shrikrishna Shantaram Dhond Salgaoncar	Attorney.

The abovesaid Ad hoc Committee of the Devasthan shall finalize the catalogue in accordance with the governing law. The Ad hoc Committee shall prepare fresh catalogue/list of the Mahajans/election roll for the purpose of election and submit report to the Administrator once in two months. Besides carrying out routine administrative activities and conducting religious ceremonies, no decision impinging on policy, shall be taken by the Ad hoc Committee without the prior permission of the Government. The above process shall be completed within six months in order to conduct election for electing new Committee of the said Devasthan for the Triennium 2013-2016, so that the new Committee can start the functioning.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).

Porvorim, 21st July, 2014.

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Notification

No. 23/25/2013-RD

Whereas, by Government Notification No. 23/25/2013-RD dated 03-10-2013 published on Series II No. 29 of the Official Gazette dated 17-10-2013 and in two local newspapers, namely, "The Times of India" and "Goa Doot" both dated 08-10-2013, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land), was needed for public purpose, viz. Land Acquisition for extension of sewer line in Central Zone (South Sector) in Fatorda Constituency, Margao Phase-II.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Dy. Collector (L.A.), South Goa, Margao, Goa to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land.

A plan of the said land can be inspected at the office of the Dy. Collector (L.A.), South Goa District, Margao-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Salcete *City:* Margao

P.T.S. No./ /Chalta No.	Name of the person believed to be interested	Area in sq. mts.
1	2	3
154/67 (part)	O: Agnelo Anthony Alvares.	221.

Boundaries:

North : Road, Ch. No. 10, P.T.S. No. 154.

South : Ch. No. 67 of P.T.S. No. 154.

East : Ch. No. 66 & 67 of P.T.S. No. 154.

West : Ch. No. 8, 9 & 10 of P.T.S. No. 154.

Total: 221

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).

Porvorim, 22nd July, 2014.

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Department of Women & Child Development

Directorate of Women & Child Development

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Order

F. No. 4-3-2000/W&CD/Part/06889

Government is pleased to promote the following Mukhya Sevika to the post of Child Development Project Officer/Social Welfare Officer (Group 'B', Gazetted) in the pay scale of ` 9,300--34,800+Grade Pay of ` 4,200/- purely on ad hoc

basis initially for period of one year or till the post is filled on regular basis whichever is earlier:

1. Smt. Pratibha Malik (General).

Upon the above promotion, Government is further pleased to order the posting of the above Official as under:

Sr. No.	Name of the Officer	Place of Posting
1	2	3
1.	Smt. Pratibha Malik, Development Project Officer/Social Welfare Officer	Child Development Project Officer Dharbandora against newly created post. She should report to Head Office till office is set up at Dharbandora.

The promoted officer shall convey her acceptance within one month from the date of promotion and this ad hoc promotion shall take effect from the date upon her joining. The official, Smt. Pratibha Malik shall report at the head quarter till joining at office of Child Development Project Officer, Dharbandora against newly created post. She should report to head office till office is set up at Dharbandora.

The expenditure in respect of above post shall be debited to the Budget Head of Account "2235—Social Security & Welfare; 102—Child Welfare; 03—Integrated Child Development Project Scheme including Health Cover (Plan)(A); 01—Salaries."

The above ad hoc promotion shall not bestow any substantive right for regular appointment or regularization of the promotion.

By order and in the name of the Governor of Goa.

Vikas S. N. Gaunekar, Director & ex officio Joint Secretary (WCD).

Panaji, 2nd July, 2014.

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